

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

OCTOBER TERM, 1900.

No. 1016.

37

HENRY OETTINGER, APPELLANT,

vs.

THE DISTRICT OF COLUMBIA.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED SEPTEMBER 6, 1900.

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COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia.

HENRY OETTINGER, Appellant, }
vs. } No. 1016.
THE DISTRICT OF COLUMBIA. }

a Supreme Court of the District of Columbia.

HENRY OETTINGER }
vs. } No. 18571. Equity.
THE DISTRICT OF COLUMBIA. }

UNITED STATES OF AMERICA, }
District of Columbia, } ss:

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Bill of Complaint.*

Filed August 20, 1897.

In the Supreme Court of the District of Columbia.

HENRY OETTINGER }
vs. } In Equity. No. 18571.
THE DISTRICT OF COLUMBIA. }

Bill of complaint.

The complainant respectfully represents:

First. That he is a citizen of the United States, resident of the District of Columbia, and brings this suit in his own right with respect to the matters and things hereinafter set forth.

Second. That the defendant is a municipal corporation, created by act of Congress, and is sued as such with respect to the matters and things hereinafter set forth.

Third. That the complainant is now and for the past five or six years continuously has been the owner of lot numbered two hundred and ninety-one, in square numbered thirteen hundred and one (formerly known as square numbered one hundred and thirty-one), in part of Beatty and Hawkins' addition to what was formerly known as Georgetown, in the District of Columbia.

Fourth. That on, to wit, the — day of —, 1895, the defendant, through its officers and agents, entered upon and took possession of

a part of the said lot 291, belonging to the complainant, and the said defendant has ever since claimed to have possession thereof; that such entry and possession by the said defendant, its officers and agents, was taken for the purpose of using and appropriating the said part of said lot for the purposes of a public street or highway known as Thirty-seventh street northwest; that since so taking possession of the said part of said lot the said defendant, its officers and agents, have graded and filled up portions of the same and laid guttering thereon, and the part of said lot so attempted to be appropriated, as aforesaid, is known and embraced within the space included in red lines on the diagram hereto annexed as part hereof and marked as Complainant's Exhibit A.

Fifth. That the said entering upon possession and taking of the said property of this complainant by the said defendant was without his leave or consent, without condemnation or other proper proceedings being taken by the defendant for the purpose of acquiring title to said property or possession of the same, without any compensation having been tendered or made to this complainant by the defendant for the taking and use of said property, and without any dedication or conveyance thereof by this complainant to the defendant for the latter's use or the use of the public as a highway or otherwise.

Sixth. This complainant further says that on, to wit, the — day of —, 1897, he placed and caused to be erected upon a part of the said property so taken and entered upon by the said defendant, as aforesaid, a fence, and the defendant thereupon, through its officers and agents and in its name, prosecuted the said plaintiff in the police court for erecting said fence, which prosecution is still pending; that such action upon the part of the defendant is an unlawful interference with him in the use and enjoyment of his property; that the defendant, as the complainant is informed and believes, threatens to and will, unless prevented by the restraining arm of this court, remove and take away the said fence so erected by him.

Seventh. The complainant further says that the action of the said defendant, its officers and agents, in so entering upon and taking possession of the part of said lot aforesaid, and improving the same as a public highway, and directing and authorizing its use for such purpose, and causing its plats and public records to indicate and show that the part of said lot is a part of the public highway or Thirty-seventh street northwest has cast a cloud upon the title of this complainant to the part of said lot, operated to his injury, and he is advised that he is entitled to have such cloud removed by the aid of this court.

Eighth. That the complainant requested — the defendant fair and reasonable compensation for entering upon and taking possession of the part of said lot, and the agents of the defendant, The Commissioners of the District, refused to pay this complainant any compensation whatever and caused to be sent to him a communication, a true copy of which is hereto annexed as part hereof and marked Exhibit B.

The premises considered, the complainant prays:

1. That process may issue in due form, directed to the defendant, commanding it, by a day to be named, to appear and answer the exigency of this bill of complaint.

2. That the court, on hearing, will decree that the entry upon and taking possession of the property of the complainant, as here-
4 inbefore described, was without authority of law and an interference with the rights of the complainant.

3. That the court, on hearing, will decree that the defendant has no right or title to the said property.

4. That the court, on hearing, will grant the complainant an injunction restraining and enjoining the defendant from interfering or molesting the complainant in his use and enjoyment of the property so entered and taken possession of by the defendant.

5. That the complainant may have such other and further relief in the premises as the nature of the case may require and to the court may seem meet and proper.

The defendant to this bill of complaint is The District of Columbia.

(S'g'd)

HENRY OETTINGER.

PADGETT & FORREST,

Solicitors for Complainant.

Henry Oettinger, being first duly sworn according to law, deposes and says that he is the complainant and has read over the above bill of complaint by him subscribed and knows the contents thereof; that the facts therein stated of his own knowledge are true and the facts therein stated on information and belief he believes to be true.

(S'g'd)

HENRY OETTINGER.

Subscribed and sworn to before me this August 7th, 1897.

(Here follows diagram marked p. 5.)

6

COMPLAINANT'S EXHIBIT "B."

E. 1564.

93858.

Office of the Commissioners of the District of Columbia.

WASHINGTON, April 16, 1897.

Mr. H. Oettinger, 3112 M street N. W.

DEAR SIR: In reply to your communication of the 22nd ult., demanding compensation for land taken from lot 291, square 1301, for the extension of 37th street, I am directed to inform you that the Commissioners do not consider that the question involved is one in which the District can properly take any action, but that you should

arrange the matter with Mr. Manogue and General Huidekoper, or seek redress in the courts.

Respectfully,
(S'g'd)

W. TINDALL, *Secretary*.

7

Answer of the Defendant.

Filed November 28, 1898.

In the Supreme Court of the District of Columbia, Holding an Equity Court for said District.

HENRY OETTINGER	} Equity. No. 18571.
vs.	
THE DISTRICT OF COLUMBIA.	

The answer of the District of Columbia to the bill of complaint filed in the above-entitled cause.

The defendant, saving to itself all benefit of exception or objection that might be taken to said bill for the many errors therein contained, answering, say- :

1-2. Answering paragraphs one and two of the bill, the defendant admits the same to be true.

3. Answering the third paragraph of the bill, the defendant does not admit that complainant has been for the past five years continuously and exclusively the owner of said lot 291, in square 1301, but says that said lot was conveyed in fee-simple to one Wm. H. Manogue and the complainant, as tenants in common, by Wm. A. Gordon by deed duly recorded among the land records of the District of Columbia January 21, 1889, in Liber 1363, folio 299 *et seq.*, as will appear by reference to said deed; that thereafter, to wit, on the 30th day of December, 1896, said Manogue conveyed his interest in said land to the complainant, as will appear by reference to his deed duly recorded among said land records, Liber 2174, folio 334 *et seq.*

8 4. Answering the fourth paragraph of the bill, the defendant denies that its officers or agents ever at any time entered upon and took possession of any rent of said lot 291 for the purpose of appropriating and using the same for the purposes of a public highway or street, or for any other purposes, or that the District of Columbia, its officers and agents, have graded — filled portions of the same and laid guttering thereon, but, on the contrary, the defendant, so believing, avers the truth to be that the entry upon said lot and improvement thereof was made by one Frederick W. Huidekoper, under and by virtue of an agreement with said William H. Manogue, acting for himself and his cotenant, the complainant herein, as hereinafter more fully stated.

5. Answering the fifth paragraph of the bill, the defendant says that it is true there was no condemnation proceeding taken for the purpose of acquiring title to said land, but it denies that the occupation and improvement of said part of said lot was without the leave,

knowledge, or consent of said complainant, or without compensation or consideration to him or without any dedication of said land; on the contrary, the defendant avers that said lot 291 was at the time complainant and Manogue acquired title thereto and had been for more than fifty years ~~prior thereto~~ practically inaccessible, except over hills and through a passageway ten feet wide in part of Back street adjacent thereto, the said Back street never having prior thereto been used as a public highway; that in order to improve, open up, and extend Thirty-seventh street one Frederick

9 W. Huidekoper, who at that time was the owner of all of the property south of said lot 291 to the south line of Beatty & Hawkins' addition to Georgetown, entered into an agreement with aforesaid Wm. H. Manogue, owner in common with the complainant of said lot 291, with the knowledge, consent, and acquiescence of the complainant, whereby, in consideration of the dedication by said Manogue and the complainant of part of their said lot 291 to the public for a public highway, the said Huidekoper agreed to and did extend and open up said Thirty-seventh street through his premises from the south line of Beatty & Hawkins' addition to Georgetown to the south line of said lot 291, and also agreed to improve said Thirty-seventh street to the north line of said lot 291, so as to make the same fit for public travel, and further agreed to convey to said Manogue and the complainant a large tract of land south of said lot 291 and immediately adjacent thereto, facing said Thirty-seventh street extended, upon the further agreement that they should dedicate a street running at right angles with said Thirty-seventh street, whereby the said Manogue and the complainant would secure an additional frontage of some 400 feet for their said lot 291, in addition to its original frontage upon said Thirty-seventh street extended.

That in pursuance of said agreements the said Huidekoper dedicated sufficient land to open and extend said Thirty-seventh street, and placed thereon the improvements as agreed upon, expending therefor a large sum of money, and said Manogue and the complainant suffered and permitted the fence in front of their said lot

10 291 to be removed and said improvements made and likewise took possession of said tract of land south of and adjacent to said lot 291, agreed to be conveyed to them by Huidekoper, and still hold and retain possession of the same, in pursuance of said agreement.

There thereafter, with full knowledge of the agreement between the said Manogue and complainant, on the one part, and the said Huidekoper, on the other part, and because of the extension of said Thirty-seventh street and the improvements placed thereon as far north as the north line of said lot 291, the defendant further extended and improved said street and expended large sums of money therefor, to wit, upon said Thirty-seventh street from the east building line of Back street to the west building line of Wisconsin avenue, in regulating, guttering, and grading, the sum of \$822.36, which said improvement was completed August 10th, 1897; and thereafter, in grading and

gravelling the intersection of Thirty-seventh street and Back street, the sum of \$47.39, said improvement being completed on August 31, 1897; and thereafter, in gravelling said Thirty-seventh street from the east building line of Back street to the west building line of Wisconsin avenue, the sum of \$117.25, which said improvement was completed September 15th, 1897; all of which expenditures by the defendant were with the knowledge of the complainant.

6. Answering the sixth paragraph of the bill, the defendant says it admits the allegations therein contained except the averment that
 11 the action taken on its part against the complainant in the police court is unlawful. On the contrary, it avers that said action was lawful, and the complainant is estopped from asserting any right or claim of title in or to so much of said lot 291 as is embraced within the lines of Thirty-seventh street extended.

7. Answering the seventh paragraph of the bill, the defendant denies that any act or thing done by it has cast a cloud upon the title of complainant to part of said lot 291, or that he is entitled to have such cloud, if any exists, removed, and the defendant avers that the complainant is estopped from asserting any claim to the part of lot 291 within the lines of Thirty-seventh street, and that said part of said lot is part of a public highway.

8. Answering this paragraph of the bill, the defendant admits the averments therein contained to be true.

And now, having fully answered, the defendant prays to be hence dismissed, with its reasonable costs, and etc., etc.

JOHN B. WIGHT,
 LANSING H. BEACH,

Commissioners of the District of Columbia.

S. T. THOMAS,
 A. B. DUVALL, *Solicitors.*

DISTRICT OF COLUMBIA, *To wit:*

Personally appeared John B. Wight, John W. Ross, and Lansing H. Beach, who on oath say they are Commissioners of the District of Columbia; that they have read the foregoing bill by them subscribed and know the contents thereof; that the facts therein stated
 12 of their own knowledge are true, and that the facts therein stated on information and belief they believe to be true.

JOHN B. WIGHT.
 LANSING H. BEACH.

Subscribed and sworn to before me this 26th day of November, 1898.

[SEAL.]

WILLIAM TINDALL,
Notary Public.

Replication.

Filed December 12, 1898.

In the Supreme Court of the District of Columbia.

HENRY OETTINGER	}	In Equity. No. 18571.
vs.		
THE DISTRICT OF COLUMBIA.		

The complainant hereby joins issue with the defendant on its answer herein filed.

PADGETT & FORREST,
Solicitors for Complainant.

13

Depositions on Behalf of Complainants.

Filed January 9, 1900.

No. 18571. Equity.

TUESDAY, *January* 17, 1899—3.30 o'clock p. m.

Met pursuant to agreement.

Appearances: Edwin Forrest, Esq., of counsel for the complainant, who is present, S. T. Thomas, Esq., and A. B. Duvall, Esq., attorney for the District of Columbia.

Whereupon HENRY OETTINGER, being produced as a witness for and in his own behalf, and being first duly sworn, deposes and says:

Direct examination.

By Mr. FORREST:

Q. What is your name? A. Henry Oettinger.

Q. What is your residence and business? A. 3124 and 3112 M street northwest, in the city of Washington, District of Columbia; dry goods and shoes.

Q. How long have you been living in West Washington, formerly known as Georgetown? A. Thirty years; since 1865.

Q. You are the complainant in this suit of Henry Oettinger vs. District of Columbia? A. I am.

Q. Did you at any time acquire ownership to lot 291, square 14 131, just outside of the town limits of Georgetown? A. Yes, sir.

Q. It is also known as square thirteen hundred and one (1301)? A. Yes, sir; it is now known as square thirteen hundred and one (1301).

Q. When did you first acquire interest in that lot? A. I acquired three-fourths ($\frac{3}{4}$) interest in said lot January 17th, 1889.

Q. Who did you purchase it from? A. Mr. Fickling.

Q. Who conveyed the property to you? A. I think Mr. William A. Gordon.

Q. Look at this deed which I hand you, under date of January 17th, eighteen hundred and eighty-nine (handing witness deed), and I will ask you if that is the deed by which you first acquired interest in this property. A. Yes, sir.

Q. I notice the deed conveys the property to you and Mr. William H. Manogue, you getting three-fourths ($\frac{3}{4}$) interest and Mr. Manogue one-fourth ($\frac{1}{4}$) interest? A. Yes, sir.

Q. Did you at any time acquire the other one-fourth ($\frac{1}{4}$) interest in this property? A. Yes, sir.

Q. Do you remember when that was? A. Two years ago last December.

Q. Look at this deed, dated December fourth (4th), 1896 (handing witness deed) from William H. Manogue and wife to Henry Oettinger, and state whether that is the deed by which you acquired the other one-fourth ($\frac{1}{4}$) interest. A. Yes, sir.

15 Q. At the time you acquired the interest in this property was there any street running through it—was there a pathway there? A. I do not exactly recollect now.

Q. After you acquired interest in this property, did the District of Columbia or the public authorities at any time come there and dig up and grade it and lay guttering? A. Yes, sir.

Mr. DUVALL: Question objected to as being indefinite as to who the District of Columbia or public authorities are.

Q. When was that? A. In 1891 or 1892, I think.

Q. Those that came out there, what did they do? A. Well, they cut off some of my property, and there was a stable there also, and they taken that down and moved it away from there, and they took from my property for the use of the street.

Q. What do you mean by street? Was there any grading and guttering done there? A. There has been some guttering and grading. It seems that after I filed some papers they stopped. They did not enter any other place than up to my property.

Q. Attached to the bill filed by you in this case you have a plat? A. Yes, sir.

Q. Do you understand that plat? A. Yes, sir.

Q. Look at this plat (handing witness Complainant's Exhibit A attached to complainant's bill) and tell me what those red
16 lines indicate. A. It appears that this much was taken off from my property for the use of the street

Q. What do you mean by that? A. That in the red line was taken off from my property.

Q. Do you mean by that that which is included within the red lines was taken off from your property for the use of the street? A. Yes, sir.

Q. Do you know how many feet are embraced within these red lines? A. Fifty-seven hundred and some odd feet; fifty-seven hundred and fifty-five (5,755) feet, I think.

Q. When this guttering and paving was done there—prior to its being done—did anybody request your permission to do it? A. No, sir.

Q. Did anybody pay you or compensate you in any way for making that use of your property? A. No, sir.

Q. Did you ever make any request to the District Commissioners for compensation, and did you receive any response to your letter? A. Yes, sir; I received two letters from them.

Q. Look at the letter I now show you under date of March 23, 1897 (handing witness letter), and see if that is the one you refer to. A. That is it.

Q. Did you receive that? A. Yes, sir.

Q. Look at the letter I now show you dated April 16, 1897, 17 purporting to be sent by William Tindall, secretary (handing witness letter), and state whether that is the second letter you received. A. Yes, sir.

Mr. Forrest, solicitor for the complainant, offers in evidence the two letters referred to and identified by the witness and ask that they may be properly marked as exhibits for the complainant. He further offers in evidence the two deeds heretofore called to the attention of the witness and identified by him as the property conveyed to him, the property in controversy, and asks that they be properly marked as exhibits for the complainant.

(NOTE.—The same are herewith filed in evidence and marked Complainant's Exhibits A, B, C, and D, respectively.)

Q. Mr. Oettinger, I will show you certain tax bills or receipts of tax bills (handing witness tax bills) and ask you to look at them and state whether these are the tax receipts you received from the District for taxes paid on that property. A. Yes, sir.

Mr. FORREST: I offer in evidence these tax receipts and ask that they may be properly marked, and I will produce the same at the hearing if necessary.

Mr. THOMAS: I object to the introduction of said tax bills, as they are entirely immaterial and irrelevant.

18 (NOTE.—The same are herewith filed in evidence and marked Complainant's Exhibit E.)

Q. Mr. Oettinger, did you in any way, since you have been the owner of this property, dedicate or give to the District the part on this plat marked with red lines for the purposes of a street?

Mr. DUVALL: Question objected to as being leading and suggestive.

A. No, sir.

Q. All the part marked in red lines do you regard as your own?

Mr. DUVALL: Question objected to for the same reason.

A. Yes, sir.

Cross-examination.

By Mr. THOMAS:

Q. Mr. Oettinger, what year did you acquire this in? A. January, 1889.

Q. And you held it for about a year? You bought it January 17th, 1889, and in December, 1896, you bought out the interest of Mr. Manogue, and he gave you the deed December 30, 1896? A. Yes, sir.

Q. When was it you say you observed these men go upon your land and dig it up? A. I do not recollect.

Q. Where were you all this time? A. In Georgetown.

19 Q. Do you remember what year it was they commenced digging your land? A. 1891 or 1892.

Q. During the year you observed these men digging up your lot were you in Georgetown? A. Yes, sir.

Q. Living in Georgetown during that year? A. I think I did. I moved to Washington, but I moved back to Georgetown again.

Q. How often were you in the habit of going up there and looking at your land? A. Not often.

Q. How often?

WITNESS: About what time?

Mr. THOMAS: About the time they were digging there. Once every few months? Once every few months to look at your land to see whether it was there or not? How often, once a month?

A. No, sir; I would go a day and then not for two or three weeks.

Q. You went there to look at your lands? A. Yes, sir.

Q. Did you see any of these men digging there? A. No, sir.

Q. Do you know who they were? A. No, sir.

Q. Never saw them before? A. No, sir; I never saw any there digging; I have not.

20 Q. Did you have a tenant on your lot? A. Yes, sir.

Q. You had a house on the lot and a tenant living in it? A. Yes, sir.

Q. What is his name? A. Scrivener.

Q. What is his first name? A. Indeed, I do not know. I did not collect the rents from him at that time.

Q. You knew him very well? A. No, sir.

Q. You can't tell me his first name? A. I think it is Tom. I did not rent to him direct myself.

Q. Who rented it to him? A. Mr. Fickling.

Q. As your agent? A. Yes, sir.

Q. Now, do you remember whether Mr. Fickling told you anything about these men digging there? A. No, sir.

Q. Did Scrivener? A. I do not know as to that.

Q. You knew Mr. Manogue, your cotenant? A. Yes, sir.

Q. Do you know anything about his dedicating a right of way over that land? A. No, sir.

21 Q. Never heard of it? A. No, sir.

Q. Do you know anything about some remarks or conver-

sation between Mr. Manogue and Mr. Huidekoper about opening up 37th street through your lot? A. I know something Mr. Manogue told me once, but I do not remember what that conversation was.

Q. It was about opening a street through your lot? A. I do not know. I was not present. I cannot say.

Q. Didn't Mr. Manogue tell you what agreement he had made with Mr. Huidekoper? A. No, sir.

Q. Didn't he tell you that he had dedicated the land to the District? A. He said something about some talk about it.

Q. Didn't Mr. Manogue tell you that when you had some conversation with him about the widening of this street? A. Yes, sir; I think so.

Q. There was a narrow passageway across the rear of your lot about ten feet wide—across the end of your lot—before anything was done there—across where these red lines are (pointing to red lines in Complainant's Exhibit A, attached to bill of complaint)? A. I do not know.

Q. It was part of the back street? A. I think so.

Q. Do you know whether Mr. Huidekoper dedicated any land for that street—for the widening of that street, making 37th street up to it? A. I do not know what he done.

22 Q. Didn't any one tell you that Mr. Huidekoper done that?

A. No, sir; Mr. Manogue told me something about Mr. Huidekoper taking some of that property for the street. I know Mr. Manogue told me something about it. I do not know what Mr. Huidekoper told Mr. Manogue. I was not present. I do not recollect the words Mr. Manogue told me, but I know he told me something about it.

Q. I notice that your letters from the Commissioners in regard to this matter are dated March and April, 1897? A. Yes, sir.

Q. Did you ever complain to them earlier than that? A. Yes, sir.

Q. Did you ever complain to them while the work was going on? A. No, sir; it was after that.

Q. After they had done all the work and gone away? A. I do not know whether it was after all the work was done or not.

Q. It was after all the men had gone? A. I did not see any men there.

Q. Didn't you see the improvements while they were going on there? A. No, sir.

Q. Where were you? A. I was in Georgetown.

Q. You were in the habit of visiting this lot very often? A. I would go there occasionally on Sundays.

Q. Sunday afternoons? A. No, sir; Sunday mornings.

23 Q. How far did you live from this lot at that time? A. I live the same distance now as I lived then.

Q. Where was your residence then? A. I do not know how many squares away it was.

Q. Was it a quarter ($\frac{1}{4}$) of a mile or a half ($\frac{1}{2}$) a mile? A. I think it is.

Q. Did you regret the guttering and grading of that street when it was done? A. Yes, sir. I did not get there when the work was done.

Q. How soon after it was done were you there? A. I do not know.

Q. You mean to say that you went to see the work only on Sundays? A. Yes, sir.

Q. You were only there on Sundays? A. Yes, sir.

Redirect examination.

By Mr. FORREST:

Q. Mr. Oettinger, you have given the number of your place of business on M street? A. Yes, sir.

Q. Did you live at the same place? A. 3124 M street, over the store.

Q. How long had you been living there? A. Since I bought it; since 1892 in that one place.

Q. When you first acquired any interest in this property where did you live then? A. 3056, one square below.

24 Q. This property that is in controversy here, is it not near where the Catholic cemetery is? A. Yes, sir.

Q. Do you say that is only a quarter ($\frac{1}{4}$) or a half ($\frac{1}{2}$) of a mile from your place? A. I cannot say.

Q. Is it not more than a mile? A. I do not know.

Q. Something has been asked you about Mr. Huidekoper. Since you have become interested in this lot has Mr. Huidekoper owned any part of it? A. No, sir.

Q. There is something I omitted to ask you, and that is whether or not within the last year or two you have constructed around this place, where the red lines are, a fence. A. Yes, sir.

Q. About when did you construct it? A. It was on Friday, July 23rd.

Q. What year? A. 1897. There was a warrant served on me the Sunday follow- for the police court. That was to appear before the police court.

Q. Do you remember what that was for? A. For erecting a fence there.

Mr. FORREST: I offer in evidence a copy of the information filed about that fence and the proceedings had thereon.

25 (NOTE.—The same is herewith filed in evidence and marked Complainant's Exhibit "F.")

Q. What sort of a fence was it? A. It was a wire fence.

Q. Tell me, if you can from your bill, how much of the ground covered by the red lines did that fence take in. A. I do not know.

Q. Did it take in this indicated from the north to the south? A. Yes, sir.

Q. Was Scrivener in possession of that property as your tenant when you first became owner of it? A. Yes, sir.

Q. How long was that, a year or a month? A. A year, I think.

Q. Who followed him as a tenant? A. Peter McGee. He has been living there five or six years.

Q. Whilst Scrivener was there Mr. Fickling was your agent and collected your rents for you? A. Yes, sir; and for a part of the time he collected the rent of Mr. McGee.

Q. You said something in your direct examination about a barn or something they tore down there? A. A stable.

Q. Was that removed entirely? A. There was a very good stable right about here (indicating on the plat where the stable stood).

26 Mr. FORREST: Mark it in lead pencil on the plat.

(NOTE.—The witness marks with a lead pencil the place on the plat where the stable stood.)

Q. What became of that stable? A. I do not know; they took it down.

Q. What was that stable worth? A. It was a good stable.

Q. By its removal what damage did you suffer? A. It might have been one hundred (\$100) dollars or seventy-five (\$75) dollars. I know Mr. Scrivener kept a horse and carriage there.

Q. Mr. Oettinger, the property that was said to be taken from you for that street, 5,755 feet, what was that property worth? A. I suppose—I do not know. It is worth twenty (20) or twenty-five (25) cents a foot.

Q. Did the District take any property by condemnation in that neighborhood? A. Yes, sir.

Q. Was it north or south of you? A. North.

Q. Do you know what that brought? A. I do not know.

Q. Is your property as well located as the property north of it that the District took? A. Yes, sir.

27 Recross-examination.

By Mr. THOMAS:

Q. You say that this little stable was torn down? A. Yes, sir.

Q. Do you remember Scrivener calling your attention to that? A. It was taken down after he left.

Q. Was it taken down during Mr. McGee's time? A. I do not think he did. He may have. I do not recollect that he did.

Q. Do you know whether Mr. Fickling told you about it or not? A. No, sir.

Q. But you won't say that Mr. McGee did not tell you about it? A. No, sir; because at that time he was paying rent to Mr. Fickling.

Q. When did you discover that the stable was torn down? A. In 1893.

Q. Before this the rear part of your lot did not front upon anything? A. Yes, sir.

Q. What was it? A. It was a back street.

Q. How wide was the back street? A. I do not know.

Q. You have a front for your lot on Thirty-seventh (37th) street, haven't you? A. Yes, sir.

28 Q. How much front? A. I do not know.

Q. One hundred and thirty-seven (137) feet on Thirty-seventh street? A. I think it is.

Q. How deep is your lot? A. It is four hundred and forty some feet.

Q. What other street does it front on? A. That is the only street.

Q. Don't it go back to some other street? A. It fronts on Back street.

Q. Where is the other front? A. There is no street back.

Q. Didn't your lot front on a street before this Thirty-seventh (37th) street was opened? A. Yes, sir.

Q. What street? A. Back street.

Q. That was twenty-seven (27) feet wide, was it not? A. Yes, sir.

Q. It was unimproved? A. Yes, sir.

Q. How wide is Thirty-seventh (37th) street?

Mr. FORREST: All this testimony is objected to as immaterial and irrelevant. The only question involved in this controversy is whether or not the District has taken this man's property without due process of law.

Q. Do you know how wide Thirty-seventh (37th) street is?
29 A. I do not know.

Q. Is it thirty (30), forty (40), fifty (50), or seventy-five (75) feet wide? A. About forty (40) feet wide.

Q. They have guttered and paved it in front of your premises?
A. They have done some guttering there—yes, sir—and pave some part of it.

Q. That was all done before you made any complaint to the Commissioners about it? A. I made complaint to the Commissioners.

Q. You made complaint in 1897? A. I made it before that. I was there in person.

Q. When were you there in person? A. Before these letters were written to me.

Q. A year before? A. I do not know. I was there two or three times.

Q. Was it two years before? A. I do not know.

Q. You don't know whether it was one (1), two (2), three (3), four (4), or five (5) years before? A. It was one (1) or two (2) years before that.

Q. Were you there while the men were working on the street? A. A. No, sir; I think it was after.

Q. How long after? A. I do not know.

Q. You had seen the men at work before you went there? A. I never seen any men working there.

Q. You saw the work they had done there during the
30 week? A. Yes, sir.

Q. You would go there on Sundays to see your lot, to see if your lot was there, and you would see what work the men had done during the week? A. I would go there sometimes on Sundays.

Q. You knew what they were doing? A. No, sir.

Q. You knew they were going to open a street through your lot?
A. No, sir.

Q. Didn't you know they were opening up Thirty-seventh (37th) street through your lot? A. I knew they were widening Thirty-seventh (37th) street; yes, sir.

Q. You didn't say anything about it until it was all done? A. I made my application also when I heard the other men had been paid.

Q. You didn't claim anything until you heard the other men were paid? A. Yes, sir.

Q. You thought if there was any money going on around about it you ought to have some? A. Yes, sir.

Redirect examination.

By Mr. FORREST:

Q. You say you went there occasionally on Sundays? A. Yes, sir.

Q. How frequently you went on Sundays you don't know? A. No, sir.

31 Q. When you first knew there had been work done out there, what condition was it in—your property where this street is? A. It was in the same condition it is now. It is not quite so deep now as it was then.

Q. I am not speaking about that. When you first saw them, what condition was the work in? A. They had filled up some and widened some.

Q. You said something about guttering. A. Yes, sir.

Q. Had they done any guttering when you first noticed it? A. Yes, sir; when I first filed these papers they stopped guttering.

HENRY OETTINGER.

Subscribed and sworn to before me this 17th day of January, 1899.
JNO. E. McNALLY, *Examiner*.

Adjourned to—

THURSDAY, *February 2nd*, 1899—3.30 o'clock p. m.

Met pursuant to adjournment.

Appearances: Edwin Forrest, Esq., counsel for the complainant; S. T. Thomas, Esq., and A. B. Duvall, Esq., counsel for the District of Columbia.

32 Whereupon WILLIAM H. MANOGUE, being produced as a witness of lawful age for and on behalf of the complainant and being first duly sworn, deposes and says:

By Mr. FORREST:

Q. Please state your name and profession. A. William H. Manogue; attorney-at-law.

Q. Did you at any time live in that part of the District of Colum-

bia known formerly as Georgetown; and, if so, how long? A. Yes, sir; about twenty-eight years I lived in Georgetown.

Q. Have you or not during the past eight or ten years had few or many dealings in real estate in that part of the District? A. I have had a great many dealings in real estate in that part of the District within the last ten years.

Q. Do you know the complainant in this case, Mr. Henry Oettinger? A. I do.

Q. You may state whether or not, in connection with him, you ever had any interest in lot No. two hundred and ninety-one (291), in square numbered thirteen hundred and one (1301), formerly known as square numbered one hundred and thirty-one (131), in part of Beatty and Hawkins' addition to what was formerly known as Georgetown. A. I had a one-fourth interest with Mr. Oettinger in the ownership of that lot.

33 Q. Do you mean an undivided one-fourth interest? A. An undivided one-fourth interest.

Q. I show you a deed that was heretofore offered in evidence from William A. Gordon and wife to Henry Oettinger and yourself, dated January 17th, 1889 (handing witness deed), and ask you if that is the instrument under which you acquired your interest in this property in controversy. A. Yes, sir; that is the deed from William A. Gordon, from whom we bought the property.

Q. And was it under that deed you first acquired interest in this property? A. Yes, sir.

Q. Look at the paper I also show you, being a deed from William H. Manogue and wife (handing witness deed), and tell me if that is the instrument by which you parted with your interest in this property to Mr. Henry Oettinger. A. Yes, sir; that is the deed I gave Mr. Oettinger for the property.

Q. You may state whether or not at the present time you have any claim or interest in this property. A. No, sir; I have no interest in it.

Q. It is alleged in the bill of complaint filed in this case that some years back the District of Columbia through its officers or agents entered upon a part of this property and started to grade and improve it for the purpose of extending Thirty-seventh street through it. You may state what, if anything, you know about such grading and improvement and what connection, if any, you had with it.

A. Well, I can't just remember about the year, but it must have been somewhere in the early nineties that Mr. Huidekoper was

34 grading Thirty-seventh street from the New Cut road up to Beatty and Hawkins' addition to Georgetown line. Mr. Huidekoper had graded the property south of the property we owned at that time, and known as the Voight property, and wished to extend Thirty-seventh street through that purchase, through the Voight property. In some way or another, I do not just now recollect just how we happened to meet in that connection, Mr. Huidekoper and myself were speaking about the extension of Thirty-seventh street through lot two hundred and ninety-one. As I now understand, a

street had been extended through his property up to lot two hundred and ninety-one, but there it stopped. There was a little triangle that extended out into the street.

Q. Do you mean that it had stopped at a point south of this lot in controversy at the time you had this conversation with Mr. Huidekoper? A. Yes, sir; as I now remember, Mr. Huidekoper owned lots two hundred and seventy-nine to two hundred and ninety of Beatty and Hawkins' addition, and these were lots south of lot two hundred and ninety-one.

Q. Did these lots in the Voight property extend up to lot two hundred and ninety-one? A. They extended immediately south of lot two hundred and ninety-one. Mr. Huidekoper, as I understood it, had extended Thirty-seventh street through the Voight property up to the south line of lot two hundred and ninety-one.

Q. From whom did you understand that? A. From Mr. Huidekoper and also from the subdivision made in the record office.

35 Q. Made by whom? A. Mr. Huidekoper's subdivision of Burleigh.

Q. You started to give, as I recollect your testimony, some conversation you had with Mr. Huidekoper, and I do not believe you finished it. A. Mr. Huidekoper suggested that we should join in the dedication of the necessary amount of ground to lot two hundred and ninety-one, Mr. Oettinger and myself, to extend Thirty-seventh street in a straight line, and he offered to give a corresponding amount of ground for the ground taken in the extension of Thirty-seventh street through our property, and also to extend the street east—running east from Thirty-seventh street.

Q. East or west? A. West from Thirty-seventh street along our property.

Q. Just in that connection—you say that he agreed to give a corresponding area of property for that taken from the lot for the purposes of extending this street. Where was that corresponding area to be taken from? A. Lot two hundred and ninety-one, in Beatty and Hawkins' addition. The lot runs from a southwesterly to a northeasterly direction, and the amount of ground to be given by Mr. Huidekoper was to be connected with the southeast portion of lot two hundred and ninety-one, so that the street he proposed would run along the south line of lot two hundred and ninety-one, thereby giving Mr. Oettinger and myself a frontage on this proposed street for the entire depth of our lot, some five hundred (500) feet.

Q. What was done, if anything, about this suggestion of Mr. Huidekoper's as to this proposed exchange of this land—his
36 suggestion that you dedicate, in connection with your associate in interest, land for the extension of Thirty-seventh street, and that he would in return dedicate some property south of lot two hundred and ninety-one? What steps, if any, did you take as to the carrying of it out? A. I spoke to Mr. Oettinger about the suggestion of Mr. Huidekoper, and Mr. Oettinger thought that we ought to have the street taken entirely off of Mr. Huidekoper's land, and that no portion should be taken from our lot for the proposed

street. I had, maybe, one or two talks with Mr. Oettinger, and maybe more, and as many with Mr. Huidekoper. The proposition and counter-propositions were made, but Mr. Oettinger never seemed to be willing to make any arrangement with Mr. Huidekoper that would contemplate taking any of lot two hundred and ninety-one for the proposed street.

Q. You have mentioned in speaking of streets two places or two streets, one proposed to the south of lot two hundred and ninety-one and the proposed extension of Thirty-seventh street. When you say that Mr. Huidekoper would not agree to give any part of lot two hundred and ninety-one for the purposes of a street, which street did you have reference to? A. Mr. Oettinger was unwilling to join in the dedication of a strip for the extension of Thirty-seventh street without he received a corresponding amount of land immediately south of lot two hundred and ninety-one, and also for the extension of the street running west along the south line of lot two hundred and ninety-one, giving none of his land for that street.

Q. When you say that street you mean the street extending west from Thirty-seventh street? A. Yes, sir.

37 Q. What, if anything, was done after that with respect to making any dedication, if you know, by either party or to the carrying out of any suggestions made by Mr. Huidekoper, Mr. Oettinger, or yourself? A. Mr. Huidekoper was, a great deal of the time, in New York, and nothing was done until I happened to be in the surveyor's office one day and observed a dedication through lot one hundred and ninety-one for the extension of Thirty-seventh street.

Q. That so-called dedication was made or pretended to be made by whom and when was it made? A. By Frederick W. Huidekoper and Virginia Huidekoper, May 14, 1891.

Q. At that time was Mr. Huidekoper in any way the owner of or did he have any interest in lot number two hundred and ninety-one? A. No, sir.

Q. Did he at that time or any time thereafter dedicate, as was suggested in your former testimony, any part of lot two hundred and ninety for a street running west — Thirty-seventh street? A. I did not observe any in that plat.

Q. Do you know whether he did of your own knowledge? A. No, sir; not of my own knowledge.

Q. Prior to the so-called dedication made by Mr. Huidekoper of a part of lot two hundred and ninety-one for the purposes of a street had you or Mr. Oettinger agreed with Mr. Huidekoper that he should make any such dedication of any part of lot two hundred and ninety-one? A. No, sir.

38 Q. Was there ever, with your knowledge and while you had an interest in that property, any agreement made with Mr. Huidekoper that he should make any such dedication to the public of any part of lot two hundred and ninety-one? A. No, sir; there were several conversations on the subject, but matters never ripened into an agreement.

Q. There never was any agreement? A. No, sir.

Q. Did you at any time after this alleged dedication came to your knowledge ratify any such dedication to the District of Columbia?

A. No, sir; I think not.

Q. Did you do anything in reference to it? A. Not that I can recollect. I was interested with Mr. Huidekoper in having Thirty-seventh street and Madison street graded and opened. I went with Mr. Huidekoper frequently to the Commissioners with reference to having some work done there, but never with reference to having it cut through this property.

Q. While you were part owner of said lot with Mr. Oettinger did you ever dedicate any part of said lot (lot two hundred and ninety-one) for the purposes of a street? A. No, sir.

Q. Do you recollect when the District or persons employed by them began to grade and improve that part of lot two hundred and ninety-one which has been used and was used for some time for the purposes of a street? A. No, sir.

Q. This conveyance of your interest to Mr. Oettinger bears date December 4th, 1896 (Complainant's Exhibit "C"). Can you
39 recollect whether or not it was before or after such conveyance that you acquired any knowledge about this grading and improvement? A. I cannot say. The District was prior to that time working on other streets, both above and below, but I do not think they attempted to work in front of this property at that time. I think the first time I observed the District having done anything in front of this property—taking this property—was shortly before the fence was replaced by Mr. Oettinger. That was shortly before the proceedings in the police court.

Q. What do you mean by shortly? A. A matter, probably, of a few days or a week. Before the fence was put up I went up there, I think, with Mr. Oettinger, and, if I remember correctly, that was the first time we saw what the District had done to this property.

Q. And that, you say, was a matter of a few days before the prosecution in the police court? A. Probably a week or so.

Q. Could it have been as much as a month? A. It might have been; not more than a month.

Q. Did the District at any time pay or offer to pay you for your interest in this property that has been taken and used as a public street? A. No, sir.

Q. Did you see this fence after it was erected—the fence that you speak of having been erected shortly before the prosecution in the police court? A. Yes, sir; I saw it shortly after it was erected.

40 —. I show you the plat attached to the bill of complaint (Complainant's Exhibit A) in this case, and ask you to tell me how much of the space within these red lines, if any, was taken up by this fence that you saw. A. The fence that I saw and the one that I am testifying about was a wire fence with posts. The wire fence came within these red lines.

Q. There are on this plat three red lines. Tell me which of these red lines you mean. A. I mean the red line which is the west side

of Back street and the south line of lot two hundred and ninety-one of the triangular space taken by the District.

Q. All the triangular space indicated within the red lines, do you mean? A. Yes, sir; the fence, as I remember it, was within two or three feet of these red lines.

Q. What kind of a fence was it? A. Posts in the ground and wire running around them.

Q. Is that property in any way improved? A. There is a frame house on it and there was a frame stable on the southeast corner of the original lot.

Q. Again calling your attention to the space within these red lines, can you tell me where that stable was located? A. The stable was within the southeast corner of the lot.

Q. What became of that stable, if you know, when they were grading and improving that space? A. I presume it was torn down. I do not know. I know it is not there.

Q. What sort of a stable was it? A. As I remember, it
41 was a tolerable good-sized stable, with a loft to it.

Q. Frame? A. Frame.

Q. Let me ask you, in your real-estate transactions that you have referred to, did they or not take in the building of houses? A. Yes, sir.

Q. I mean have you or not built a few or many houses of this kind? A. Yes, sir; upwards of two or three hundred.

Q. Tell me, then, if you can, the value of that stable. A. Well, the value of that stable to that property I should say would be worth not less than one hundred (\$100) dollars.

Q. Leaving out to that property. A. About one hundred (\$100) dollars.

Q. Was that the only building within these red lines? A. I cannot say positively, but I have an idea that the front—there was a porch on the main building came out a little, but I am not certain of that.

Q. What, in your opinion, is the value of the land proposed to be taken for the public street; what is it worth per foot, the land indicated within the red lines? A. Do you mean now or then?

Q. Put it both ways. A. Land from the values given by the owners a few hundred yard- above, near Schneider's lane, was worth at least twenty-five cents a foot.

Q. Was that property as valuable as the property you speak of?
42 A. This is more valuable. The jury in some cases awarded thirty cents a foot.

Q. Independent of what the jury would give in this case, can you give of your own knowledge what that property was worth? A. Twenty-five cents a foot.

Q. What would you say it was worth now? A. We were asking at that time twenty-five cents a foot for the whole thing. This portion, of course, was more valuable, and that is why I put the value at twenty-five cents.

Cross-examination.

By Mr. THOMAS :

Q. You say that you and Mr. Oettinger were willing to dedicate this piece of ground in controversy if Mr. Huidekoper would give to you the same amount of ground somewhere else, and if he would also dedicate enough of his own ground to open up a street alongside of your lot. How wide a street did you want Mr. Huidekoper to dedicate that way alongside of your lot? Q. You start by saying that Mr. Oettinger and I were willing to do that. I did not say that. I said that Mr. Huidekoper made that proposition to me and I made *made* that proposition to Mr. Oettinger, but Mr. Oettinger never would agree to it. Mr. Oettinger is a very peculiar man. I had two or three interviews with him. I was rather favorably impressed with the proposition, but Mr. Oettinger, as I say, was peculiar. He did not want to agree to it. He thought he could get more and he would not agree to it.

43 Q. The proposition was, I believe, that you and Mr. Oettinger should dedicate the piece of ground in controversy in this case for the purpose of extending Thirty-seventh street; that he (Huidekoper) would give to you and Oettinger a piece of ground equal in arrear somewhere else, and that he would in addition to that dedicate enough of his ground alongside of your lot (lot two hundred and ninety-one) for a street, the whole length of your lot?

Mr. FORREST: Question objected to as not correctly stated.

A. Mr. Huidekoper's proposition, as I recollect, was to give a corresponding number of feet for the strip taken, a corresponding number of feet to the southeast portion of lot two hundred and ninety-one and extend the street west, which would take off a considerable portion of lot two hundred and ninety-one. This proposition Mr. Oettinger objected to, as he thought Mr. Huidekoper should dedicate the entire street through his own property.

Q. In other words, Mr. Oettinger would not dedicate any land for this purpose, and he wanted to have a street alongside of your lot at the cost of Mr. Huidekoper?

Mr. FORREST: I object. The testimony of the witness will show what Mr. Oettinger wanted Mr. Huidekoper to do.

Q. No; Mr. Oettinger conceived that the strip to be taken for the dedication was the most valuable part of that land, and that therefore he ought to have an equivalent for such dedication, and that the ought to be compensated for it.

Q. You regarded it as advantageous to open up Thirty-seventh street for lot two hundred and ninety-one?

44 Mr. FORREST: Question objected to as immaterial.

A. I regarded any improvements that were being made around there by Mr. Huidekoper as an advantage to that property. I wished to assist Mr. Huidekoper all I could in that direction and I called with Mr. Huidekoper on the Commissioners. Mr. Huide-

koper had a large piece of ground there and I wanted to see it developed.

Q. He dedicated a great deal of ground there for that purpose?

Mr. FORREST; Question objected to as being irrelevant, immaterial, and incompetent.

A. I presume he did. Maybe as much as sixty thousand (60,000) feet of ground.

Mr. FORREST: Same objection.

Q. Down to the south line of lot two hundred and ninety-one, north of the south line? A. I understand he did.

Q. In other words, he extended Thirty-seventh street through to the south line of Beatty and Hawkins' addition—to the south line of lot two hundred and ninety-one?

Mr. FORREST: Question objected to, as that has nothing to do with the issue in this case.

A. I understand he did.

Q. I understand you to say that you did not agree with Mr. Huidekoper on behalf of yourself and your co-owner, Mr. Oettinger, to dedicate to the Commissioners or the public that little triangular piece of lot two hundred and ninety-one? A. I say
45 that we had had—that I had had—several talks with Mr. Huidekoper with the view of having an exchange and a dedication of the land for the street there, but these talks never resulted in any promise or agreement, either verbally or in writing, as I remember.

Q. Was lot two hundred and ninety-one on a public highway before this transaction—these improvements? A. Yes, sir; it faced on Back street.

Q. How wide was Back street? A. The maps will show. I think forty or fifty feet.

Q. How wide was Thirty-seventh street? A. I do not know. I think sixty feet.

Q. Was not there an agreement with Mr. Huidekoper something like this: That you, for yourself and Mr. Oettinger, as owners of lot two hundred and ninety-one (291), would dedicate to the public the triangular piece of that lot now in controversy for the purpose of extending Thirty-seventh (37th) street to Back street, and that in consideration of the benefits to be derived to your lot by reason of the extension of Thirty-seventh (37th) street and the placing of that lot upon a public highway, when for fifty years or more it had not been a public highway, and for the further consideration that Mr. Huidekoper would deed to you, nearest to lot two hundred and ninety-one (291) *nearest to lot two hundred and ninety-one (291)*, a certain amount of ground facing on Thirty-seventh (37th) street, that you, Mr. Oettinger, and he (Huidekoper) would open a street at
46 right angle with Thirty-seventh (37th) street, and thereby give to your lot an additional frontage of forty-seven (47) feet?

Mr. FORREST: Question objected to, as it assumes that there was such an agreement between Mr. Huidekoper, Mr. Oettinger, and witness. Witness has testified that there never was any such agreement. It also assumes that lot two hundred and ninety-one did not have a frontage on a public street, whereas it had its entire front on Back street.

A. I will say that Back street was a street from the time the town was laid out and was one of the thoroughfares for that section. Lot two hundred and ninety-one had its entire frontage on Back street. In reference to that agreement, I wish to say that I never had any such agreement with Mr. Oettinger and Mr. Huidekoper. Some such arrangement as that may have been talked about, but I do not remember. I know I talked with Mr. Oettinger about it, but he would not listen to the proposition at all. He wanted the street to come off of Mr. Huidekoper's land entirely—the street running west to the south of lot two hundred and ninety-one.

Q. With whom would Mr. Huidekoper have that agreement if he had it with any one? A. He might have sent it to me. Mr. Huidekoper was a very prolific letter-writer and paper-writer, and during this year that I was working with him he sent me quite a number of letters, plats, and papers. Mr. Huidekoper wanted to get me interested up there. He knew I built a great many houses and he wanted to get me interested up there.

Q. When you say he might have sent you an agreement,
47 what do you mean? A. He may have during this year sent me or shown me a copy of an agreement to look over.

Q. With whom? A. I presume it was between Mr. Huidekoper, Mr. Oettinger, and myself.

Q. You removed that fence from off the front of lot two hundred and ninety-one? A. No, sir.

Q. Who did? A. I can't say. I didn't. I understood from Mr. Oettinger that the District did it.

Q. Didn't you permit Mr. Huidekoper at first to fill a portion of that lot before the District went there? A. No, sir.

Q. Don't you remember that you removed that fence yourself before the District had anything to do with it? A. No, sir.

Q. Do you remember when the District went there to work? A. As I said in my examination-in-chief, I do not.

Q. It was before you sold out to Mr. Oettinger? A. I really can't say. As I said before, my recollection on that point is not very good. It was shortly before the case in the police court.

Q. Do you mean to say that you have not much recollection about this whole matter? A. I mean that I have no definite recollection as to when the District removed this fence from lot two hundred and ninety-one (291).

Q. Do you remember what the nature of the work was that the District did on the street that went into your lot? A. Mr.
48 Thomas, I want to make myself clear. The District worked up to the south line of lot two hundred and ninety-one. For

possibly a year or two they were doing work in a sort of a desultory way, and then Mr. Huidekoper and myself got the District to commence grading. The District was working up and down alongside of lot two hundred and ninety-one, but not on it. The first time that I remember of the District taking or coming on lot two hundred and ninety-one was some time before the prosecution in the police court.

Q. What became of this little piece of ground that Mr. Huidekoper proposed to give to you and Mr. Oettinger? Do you know who has possession of it now? A. No, sir.

Q. Didn't you and Mr. Oettinger take possession of it? A. No, sir; I was very much surprised when I saw in the answer that it was a part of this property. That was the first time I knew anything about it.

Q. You spoke in your testimony—direct testimony—about the jury making some award on this street. Do you remember the property upon which the award was made? A. Yes, sir; north of Back street.

Q. Did that condemnation include this piece? A. No, sir; because this was south of Back street.

Q. Did not the public authorities assume that this little piece of ground had been condemned?

Mr. FORREST: I object to what the public authorities assumed.

A. No, sir; because this land was south of Back street.

Q. Do you know how much money was spent by the public
49 authorities before you sold out to Mr. Oettinger? A. No, sir.

Q. You were always willing to accept Mr. Huidekoper's proposition?

Mr. FORREST: Question objected to, as it is immaterial what Mr. Manogue was willing to accept, he not being a party to these proceedings.

A. I thought it was a fair proposition.

Q. Did you tell Mr. Oettinger that?

Mr. FORREST: It is immaterial what Mr. Manogue told Mr. Oettinger.

A. I may have.

Q. You didn't conceal anything of the negotiations that were going on between you and Mr. Huidekoper in regard to Thirty-seventh street from Mr. Oettinger, did you? A. No, sir; I would see Mr. Huidekoper in reference to this thing—I want it understood that I saw Mr. Huidekoper maybe ten times in reference to other things up there. I think we had three or four talks about it.

Q. Where did Mr. Oettinger live at the time of this transaction?

A. On M street near Thirty-first street.

Q. How far from lot two hundred and ninety-one? A. About a mile or a mile and a half.

Q. Do you know if he went up there while these improvements were going on? A. No, sir.

Q. Do you know whether he was in Georgetown or not while that street was being opened? A. I have no positive knowledge on that subject. He had a good deal of sickness at that time.

Q. About how long a period did the work done on that street cover?

Mr. FORREST: Question objected to because the witness has already stated that he knew nothing about the matter; that he was only up there a short time before the prosecution in the police court.

A. Mr. Thomas, I knew they were doing work up there—I mean the work on this street—I knew that the work was being done on Thirty-seventh street for five or six months.

Q. That was during the whole time you owned this lot? A. Yes, sir.

Q. Whenever you talked with Mr. Oettinger about the lot you would talk about the opening up of Thirty-seventh street. It was opened up in 1890 or '91. He knew it was opened up, didn't he?

A. They were just putting sewer pipes through there at that time and the rain would come and wash it out.

Q. Were you connected with the property in any way after Mr. Oettinger bought you out? A. No, sir.

Q. Were there any improvements on it during the time you owned it? A. Yes, sir.

Q. Were there any improvements on it during the time a portion was taken for Thirty-seventh street? A. Yes, sir; they had a stable there.

Q. Was there a house on it? A. There was a house on the lot.

Q. Was it rented? A. Yes, sir; it rented for ten (\$10) dollars per month.

Q. When you and Mr. Oettinger owned it who collected the rents? A. Mr. Fickling, I think.

Q. He paid over to Mr. Oettinger his share of the rents and paid you your share? A. No, sir; he paid over the rent to Mr. Oettinger. He would pay all of it over to Mr. Oettinger and every six or eight months we would have a settlement of it—when we paid our taxes.

Q. Well, now, do you know how soon after a settlement was made with Mr. Oettinger that he knew the stable was torn down? A. No, sir.

Q. Do you know when he ceased to get rent for the stable? A. No, sir; I moved to the country in 1894 and I did not see Mr. Oettinger for three or four years so frequently.

Redirect examination.

By Mr. FORREST:

Q. On this plat annexed to the bill is Exhibit A. I call your attention to the red line marked 154½ feet, with the words Back street in front of it, and will ask you whether that whole line of 150½ feet

fronted on Back street. A. My recollection is that the frontage on that lot on Back street was one hundred and forty-eight (148) feet—that is, the frontage of the entire lot on Back street was one hundred and forty-eight (148) feet.

Q. You spoke about Mr. Oettinger wanting an equivalent from Mr. Huidekoper for any part of lot two hundred and ninety-
52 one that was taken for the purposes of a street. State whether to your knowledge any such equivalent for the value of the ground taken for the street was ever given by Mr. Huidekoper to Mr. Oettinger. A. No, sir; not to my knowledge.

Q. You have spoken of an agreement that may have been sent to you by Mr. Huidekoper. Do you mean an agreement or a draft of an agreement to be signed? A. A draft of an agreement to be signed.

Q. Just simply a draft of the proposed agreement to be signed? A. Yes, sir.

Q. To your knowledge was any such agreement ever signed? A. No, sir.

Q. You also testified on cross-examination about a proposition that Mr. Huidekoper had made to you, and that you were willing to accept. Let me ask you whether you have ever accepted any such proposition. A. No, sir; never.

Recross-examination.

By Mr. THOMAS:

Q. Do you remember whether you gave Mr. Huidekoper to understand that you had accepted it? A. No, sir; because Mr. Huidekoper knew that Mr. Oettinger and myself were interested in that property, and if there was any such agreement it had to bear Mr. Oettinger's signature.

53 Q. You spoke of seeing in the surveyor's office a subdivision of Burleigh? A. Yes, sir.

Q. When did you see that? In what year? A. In 1891.

Q. Before or after the alleged taking of this ground? A. Before the taking of this ground.

Q. How long before? A. It may have been a year or so before.

Q. After you had begun to talk with Mr. Huidekoper about Thirty-seventh street? A. I can't say whether it was after or before we talked about Thirty-seventh street. I think it was about that time.

Q. How did you happen to go to the surveyor's office and look at the Burleigh subdivision? A. I have said I dealt largely in real estate. In this very book—County Book 8—I had a subdivision of one hundred and seventy-nine lots in Long Meadows. It was my practice to keep posted about the subdivisions made in Georgetown. As I made a great many of them myself, I kept posted about all the subdivisions made by other people.

Redirect examination.

By Mr. FORREST:

Q. The subdivision of Burleigh as well as the subdivision of

Beatty and Hawkins' addition to Georgetown are both in the county?

A. Yes, sir.

Q. This matter that you spoke to Mr. Oettinger about—this agreement with Mr. Huidekoper—that was in reference to lot two
54 hundred and ninety-one of Beatty and Hawkins' addition to Georgetown? A. Yes, sir.

Recross-examination.

By Mr. THOMAS:

Q. Now, this subdivision of Burlew and Long Meadows, were they on the same page?

Mr. FORREST: Question objected to, as it has no bearing upon the issue in this case.

A. They were not.

WM. H. MANOGUE.

Subscribed and sworn to before me this 2nd day of February, 1899.

JNO. E. McNALLY,
Examiner in Chancery.

55 In the Supreme Court of the District of Columbia.

HENRY OETTINGER	} No. —.
vs.	
DISTRICT OF COLUMBIA.	

I, John E. McNally, an examiner in chancery, do hereby certify that the foregoing and annexed depositions were taken down by me from the oral statements of the witnesses, each witness being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth.

I certify that my fee for taking said depositions was \$28.12, which has been paid.

JNO. E. McNALLY, *Examiner.*

56 "EXHIBIT A."

This indenture, made this 17th day of Jan'y, in the year of our Lord, eighteen hundred and eighty-nine, by and between William A. Gordon and Harriette C. Gordon, his wife, of the first part, and Henry Oettinger and William H. Manogue, of the second part, all of the District of Columbia.

Witnesseth: That the said parties of the first part, for and in consideration of ten (\$10) dollars, lawful money, to them in hand paid by the said parties of the second part, the receipt of which, before the sealing and delivery of these presents, is hereby acknowledged, have given, granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed, and do by these presents give, grant, bargain, sell, alien, enfeoff, release, convey and confirm unto the parties of the

second part, their heirs and assigns forever, the following-described land and premises, situate, lying and being in the city of Georgetown, in the District of Columbia, and distinguished as all of lot numbered two hundred and ninety-one (291) in Beatty and Hawkins' addition to said Georgetown, together with all and singular, the improvements, ways, easements, rights, privileges and appurtenances to the same belonging, or in anywise appertaining, and all the estate, right, title, interest and claim, either at law or in equity or otherwise however, of the parties of the first part, of, in, to or out of the said land and premises:

To have and to hold the said land and premises and appurtenances unto, and to the use of the said Henry Oettinger and
 57 his heirs as to three undivided fourths thereof and unto and to the use of the said William H. Manogue and his heirs as to the remaining undivided fourth thereof, as tenants in common and not as joint tenants.

And the said parties of the first part for themselves, their heirs, executors and administrators do hereby covenant and agree to and with the said parties of the second part, their heirs and assigns, that they the parties of the first part and their heirs, shall and will warrant and forever defend the said land and premises and appurtenances unto the said parties of the second part, their heirs and assigns, from and against the claims of all persons claiming or to claim the same or any part thereof, or interest therein, by, from, under or through them, either or any of them.

And further, that the parties of the first part and their heirs shall and will at any and at all times hereafter, upon the request and at the cost of the parties of the second part, their heirs and assigns, make and execute all such other deed or deeds, or other assurance in law, for the more certain and effectual conveyance of the said land and premises and appurtenances unto the said parties of the second part their heirs and assigns, as the parties of the second part their heirs or assigns, or their counsel, learned in the law, shall advise, devise or require.

In testimony whereof the parties of the first part have hereunto set their hands and seals on the day and year first above written.

WILLIAM A. GORDON. [SEAL.]

HARRIETTE C. GORDON. [SEAL.]

Signed, sealed, and delivered in the presence of—
 C. H. FICKLING.

58 DISTRICT OF COLUMBIA, *To wit:*

I, Charles H. Fickling, a notary public in and for the said District, do hereby certify that William A. Gordon and Harriette C. Gordon, his wife, parties to a certain deed bearing date on the seventeenth day of Jan'y, A. D. 1889, and hereto annexed, personally appeared before me, in said District, the said William A. Gordon and Harriette C. Gordon, his wife, being personally well known to me to be the persons who executed the said deed, and acknowledged

the same to be their act and deed; and the said Harriette C. Gordon, being by me examined privily and apart from her said husband and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and notarial seal this seventeenth day of January, A. D. 1889.

CHARLES H. FICKLING,
Notary Public.

[SEAL.]

Endorsed: Received for record Jan. 21st, 1889, at 3.33 p. m. Recorded in Liber 1363, folio 299 *et seq.*, one of the land records — District of Columbia, and examined by Jas. M. Trotter, recorder. (Stamp.)

59

“EXHIBIT B.”

Deed in Fee-simple—A.

This indenture, made this fourth day of December, in the year of our Lord one thousand eight hundred and ninety-six, by and between William H. Manogue and Lizzie C. Manogue his wife, parties of the first part and Henry Oettinger of the District of Columbia party of the second part:

Witnesseth, that the said parties of the first part, for and in consideration of ten (10) dollars, lawful money to them in hand paid by the party of the second part, the receipt of which, before the sealing and delivery of these presents, is hereby acknowledged, have given, granted, bargained, and sold, aliened, enfeoffed, released, conveyed and confirmed, and do by these presents give, grant, bargain and sell, alien, enfeoff, release, convey and confirm unto the party of the second part, his heirs and assigns forever, the following-described land and premises, situate, lying and being in the city of Washington and District of Columbia, and distinguished as all of original lot two hundred and ninety-one (291) in Beatty and Hawkins' addition to Georgetown, being in square numbered one hundred and thirty-one (131) in that part of the District of Columbia formerly known as Georgetown and now being in square thirteen hundred and one (1301) in Washington, District of Columbia, together with all and singular the improvements, ways, easements, rights, privileges and appurtenances to the same belonging, or in anywise appertaining; and all the estate, right, title, interest and claim, either at law or in equity, or otherwise however, of the parties of the first part, of, in, to or out of the said land and premises:

To have and to hold the said land and premises and appurtenances, unto and to the only use of the party of the second part his heirs and assigns forever.

And the said parties of the first part for themselves their heirs, executors and administrators, do hereby covenant and agree to and with the party of the second part, his heirs and assigns, that they

the parties of the first part and their heirs shall and will warrant and forever defend the said land and premises and appurtenances unto the party of the second part his heirs and assigns, from and against the claims of all persons claiming or to claim the same or any part thereof, or interest therein, by, from, under or through any of them.

And further, that the parties of the first part and their heirs shall and will at any and all times hereafter, upon the request and at the cost of the party of the second part, his heirs and assigns, make and execute all such other deed or deeds or other assurance in law, for the more certain and effectual conveyance of the said land and premises and appurtenances unto the party of the second part, his heirs or assigns, as the party of the second part, his heirs or assigns, or his or their counsel learned in the law shall advise, devise or require.

61 In testimony whereof, the parties of the first part, have hereunto set their hands and seals on the day and year first hereinbefore written.

WM. H. MANOGUE. [SEAL.]
LIZZIE C. MANOGUE. [SEAL.]

Signed, sealed, and delivered in the presence of—
GUY E. PADGETT.

DISTRICT OF COLUMBIA, *To wit* :

I, Jilson D. Entwisle, notary public in and for the said District aforesaid, do hereby certify that William H. Manogue and Lizzie C. Manogue, his wife, parties to a certain deed bearing date on the fourth day of December, A. D. 1896, and hereunto annexed, personally appeared before me, in the said District aforesaid, the said William H. Manogue and Lizzie C. Manogue being personally well known to me as the persons who executed the said deed, and acknowledged the same to be their act and deed; and the said Lizzie C. Manogue, being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her by me, acknowledged the same to be her act and deed, and declared that she willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and official seal this 28th day of December, A. D. 1896.

[SEAL.]

JILSON D. ENTWISLE,
Notary Public.

62 Endorsed: Received for record on the 30th day of December, A. D. 1896, at 1.11 o'clock p. m., and recorded in Liber No. 2174, at folio 334 *et seq.*, one of the land records for the District of Columbia, and examined by C. H. J. Taylor, recorder.

63

"EXHIBIT C."

L. S. 116, page 227 ; L. R. 1564, E. D., 1897.

Capt. W. M. Black, Engineer Commissioner.

DISTRICT OF COLUMBIA, ENGINEER DEPARTMENT,
WASHINGTON, D. C., *March 23, 1897.*

SIR : I am directed by the Engineer Commissioner to acknowledge the receipt of your communication of the 22d inst., relative to compensation for land taken from lot 291, sq. (1301) 131, G. T., for the extension of 37th St., and to inform you that the matter has been referred to Capt. Beach for examination and report.

Very respectfully,

A. Y. LAKEMAN,
Chief Clerk, E. D.

To Mr. H. Oettinger, 3112 M St. N. W., city.

64

"EXHIBIT C."

*(Envelope.)*Office of the
Engineer Commissioner,
Washington, D. C.

(Official stamp.)

Mr. H. OETTINGER,
3112 *M street N. W., City.*

"EXHIBIT D."

E. 1564.

938 58.

Office of the Commissioners of the District of Columbia.

WASHINGTON, *April 16, 1897.*

Mr. H. Oettinger, 3312 M street N. W.

DEAR SIR: In reply to your communication of the 22nd ult., demanding compensation for land taken from lot 291, square 1301, for the extension of 37th street, I am directed to inform you that the Commissioners do not consider that the question involved is one in which the District can properly take any action, but that you should arrange the matter with Mr. Monogue and General Huide-

65-80 koper or seek redress in the courts.

Respectfully,

W. TINDALL, *Secretary.*

81

EXHIBIT "G."

Richmond and Danville Railroad Company, office of the receivers.

F. W. Huidekoper, Reuben Foster, receivers.

WASHINGTON, D. C., *Dec. 9, 1892.*

W. H. Manogue, Esq., city.

DEAR SIR: I should like to see you and get matters adjusted so I

could open the street west of 37th and get that much property *you* of assessment, which begins, I understand, on Jan'y 1st.

Will you not fix a time when I can come to see you?

Yours truly,

F. W. HUIDEKOPER.

EXHIBIT "H."

METROPOLITAN CLUB, WASHINGTON, *March 22, 1893.*

W. H. Manogue, Esq., Louisiana Ave.

DEAR SIR: I should be glad to get the deeds exchanged and our matters adjusted while my wife is in town during the next 30
82 days. Will you kindly call at my office, 1300 Penna. Ave., when you are passing?

Yours,

F. W. HUIDEKOPER.

EXHIBIT "I."

Richmond and Danville Railroad Company, office of the receivers,
1300 Pennsylvania avenue.

R. & D.

F. W. Huidekoper, Reuben Foster, receivers.

WASHINGTON, D. C., *May 30, 1893.*

W. H. Manogue, Esq.

DEAR SIR: I should be very glad to get the deeds in settlement of 37th Street extension exchanged with you before Mrs. Huidekoper leaves town on Monday next. I go to New York tonight, but shall be here on Friday. Cannot we fix the matter then?

I should be glad to hear from you.

Yours truly,

F. W. HUIDEKOPER.

83

Depositions on Behalf of Defendant.

Filed May 18, 1899.

In the Supreme Court of the District of Columbia.

HENRY OETTINGER	}	Equity. No. 18571.
vs.		
DISTRICT OF COLUMBIA.		

DISTRICT OF COLUMBIA, *To wit:*

Be it remembered that — the examination of witnesses begun on the 24th day of March, 1899, and continued from time to time until the 15th day of April, 1899, I, Geo. H. Calvert, Jr., an examiner in chancery, caused said witnesses to be present.

GEO. H. CALVERT, JR.,
Examiner in Chancery.

84

WASHINGTON, D. C.,

March 24th, 1899—1 o'clock p. m.

Met, pursuant to notice, at the law offices of S. T. Thomas, Esq., 452 D street northwest, to take testimony for and on behalf of the defendant.

Present: Edwin Forrest, Esq., for complainant; Messrs. S. T. Thomas and A. B. Duvall, for defendant; examiner, and witnesses.

Whereupon FREDERIC W. HUIDEKOPER, a witness of lawful age, being by me first duly sworn according to law for and on behalf of the defendant, testified as follows:

By Mr. THOMAS:

Q. Where do you reside, Mr. Huidekoper? A. Well, my real residence is Meadville, Pennsylvania, although I am residing at the present time in the city of Washington.

Q. Have you any property interests in Georgetown? A. Yes, sir; I have.

Q. What, if anything, do you know about the improvement of Back street, in Georgetown? Do you know Back street? A. Yes, sir; I do.

Q. Have you any property abutting on Back street? A. Yes, sir; I have.

85 Q. Had you any in 18—? A. I might just say I have had property abutting on Back street ever since 1887.

Q. Do you remember any grading or filling in of Back street?

Mr. FORREST: Just one moment. That is object-to as immaterial, there being no question made in these proceedings as to any improvement or grading that may have been made on Back street, or that any property was taken of this complainant by reason of the improvement or extension of Back street.

Mr. THOMAS: Well, I will withdraw that question for the present.

Q. Are you acquainted with Mr. William H. Manogue? A. Yes, sir; I am.

Q. Did you say you do know him? A. Yes, sir.

Q. How long have you known him? A. I have known him ever since some time in 1889.

Q. Do you know anything about lot 291, in square 131, Georgetown? A. Yes, sir; I do.

Q. What, if anything, do you know about the dedication or alleged dedication of any part of that lot for purposes of Back street?

Mr. FORREST: That is objected to as immaterial.

A. Not for the purposes of Back street. You mean for the purposes of Thirty-seventh street.

Q. For the purposes of Thirty-seventh street, I mean.

86 Mr. FORREST: The answer of the witness is objected to as a voluntary statement on his part and not asked for in the question.

Q. Now, go ahead, Mr. Huidekoper. A. Some time in 1889, or a number of times during 1889, I had conferences with William H. Manogue, who purported to be the owner, partly in his own right and as representative of the other owners, of lot 291. I had practically extended Thirty-seventh street without having at that time dedicated it to the public up to the line of lot 291, and the traveling public had to then go east through a small piece of property of mine on to Back street, to drive through. Mr. Manogue and I had these sundry conferences and finally made the verbal agreement that the portion of lot 291 as now represented by the map or by the maps, or all the western extension of Thirty-seventh street, as dedicated, should be thrown—should be given to the public for a highway in consideration that I give the same amount of ground south of lot 291 to the owners of lot 291, which gave them an additional frontage of some thirty-eight feet on Thirty-seventh street, and that that additional should open the street at right angles to Thirty-seventh street and extending westwardly, which would give Mr. Manogue (one-half of which street was then to be dedicated by Mr. Manogue and others and I was to dedicate the other half to the public)—which would give Mr. Manogue's property 38. feet or more of front on Thirty-seventh street and a frontage on the side street of some 400 feet, Mr. Manogue telling me at the time that he intended to build six small houses upon this property—six houses upon this property. In pursuance of this agreement

87 which was temporarily surveyed by William H. Brewer, the surveyor, the feet were—the amount of ground was arrived at and finally plotted on the ground by Mr.—finally located on the ground, I should say, by Mr. Brewer. Mr. Manogue then allowed us to go in upon this little triangle and to tear down the fence and to remove the miserable old shanty of a barn that was upon the matter, and Mr. Blundon here did the first work for me, making that street passable for the public. Mr. Manogue or his lessee or agents took possession of part of the property that was facing on Thirty-seventh street and just south of lot 291, and have been in occupation of that ground ever since, as I considered, in pursuance of this agreement. In the spring of 1891 the surveyor of the District, using Mr. Brewer as his sub-surveyor, as his assistant, plotted the extension of Thirty-seventh street from the south part of Beatty and Hawkins' subdivision up to this lot 291, and the Commissioners approved that subdivision and it is now on file, and the dedication which I and my wife made upon that map and which is now on file in the surveyor's office. By an agreement subsequently or about that time made with Mr. Manogue, Mr. Brewer's lines, as surveyed, was plotted on the plot book in the surveyor's office as being the best method to dedicate also the interest in lot 291 to the public, and Mr. Manogue agreed with me that he or the representatives or owners would go and sign the plot book in the complete dedication of the right through to Back street. I and my wife have signed that, and they not having signed it, it gives the inference

88 that *that* we were dedicating lot 291 to the public, in which the original plat shows that we had no interest, and they

having failed to do so, the dedication, of course, only extends as far as our interest goes, and that was to the south side of lot 291.

Q. Now, what further——

Mr. FORREST: Just one moment, Mr. Thomas. The answer of the witness is objected to in so far as it purports to state a verbal agreement with Mr. Manogue with reference to the dedication or giving of part of his land to the public, for the reason, first, that it is a matter with reference to the disposition or sale or grant of an interest in real estate, and, being merely a verbal contract or understanding, he is prohibited by the statute; and, in the next place, any interest or attempted interest that Mr. Manogue may have attempted to convey by verbal understanding or agreement, he could not by such verbal understanding or agreement convey any of the interest of this complainant in the premises.

A. I want to add to my answer one thing further.

Mr. FORREST (continuing objection): And because the answer is for other reasons incompetent, immaterial, and irrelevant because it has for its basis testimony that is incompetent, immaterial, and irrelevant.

WITNESS (continuing): I want to add that in the early part of 1893, I think it was in January, I found that matters had not been carried out as agreed to, and I sent a written communication to Mr. Manogue with the suggested phraseology that I proposed to put in the deed of conveyance for myself and wife to Mr. Manogue
89 and others, and also suggested the form of conveyance which they should make for the exchange to us——

Mr. FORREST: To so much of the answer as given since my objection I object to it on the ground that it is stating the contents of a written paper, and that no proper foundation has been laid for secondary evidence.

Q. Now, having referred to that letter, Mr. Huidekoper, I wish you would state whether you had any further communication with Mr. Manogue on the subject. A. I had no further communication from Mr. Manogue on the subject, although I wrote him two or three times after that writing that our agreement should be carried out, and that the deeds that he should prepare—have the deeds prepared, and I would have others prepared for the exchange.

Mr. FORREST: The answer of the witness is objected to for the reasons last stated.

Q. Did you get any reply to your letters? A. I got no reply to any of those letters.

Q. Did you keep copies of them? A. I have a copy of the original, but I cannot find copies of the subsequent letters.

Q. You mean you have a copy of the first one? A. Yes, sir.

Q. Look at this plat, Mr. Huidekoper, attached to the bill and see if you recognize it as showing the location of lot 291 and the amount of that lot required for Thirty-seventh street. A. I do.

90 Q. Well, what is that triangular piece in red (indicating) ?

A. That triangular piece in red is the amount of ground which was to be occupied by the extension of Thirty-seventh street, for which I was to give my ground facing on Thirty-seventh street south of that extending to the center of the street and in consideration of the allowance of a certain amount of ground in that extension through.

Q. That ground which was given in exchange—— A. Runs to the center of that street and back in this way.

Q. This land which you were to give to Mr. Manogue in exchange for so much of lot 291 as required for Thirty-seventh street was a strip on the—— A. Was a triangular piece of ground facing east on Thirty-seventh street and part of lot 290, the amount required to make up the quantity extending to the center of the street at right angles to Thirty-seventh street and which I have previously referred to.

Q. Do you know anything about the value of the stable that was on this lot 291? A. Well, it was of but very little value. It was very old indeed.

Q. Do you know anything about the portion of that lot being filled before the District commenced any work there? A. Yes, sir; I filled it up sometimes three feet. It was very low, swampy ground, just east of a little run, and straightened the little stream and

91 filled it up some three feet before it could be even passable.

This Mr. Blundon did for me, who was doing the grading for me.

Q. Did Mr. Manogue know anything about that? A. My impression is that I met Mr. Manogue there at one time. He gave me consent to go in and take possession of it and to do the work there, and no objection was ever made while we were doing the work, but this——

Mr. FORREST: The impressions of the witness are objected to as immaterial and incompetent.

Q. What, if anything, do you remember about the removal of a fence there? A. We tore down the fence that was on the ground on the east and south side- of the lot before we went into—before we filled it up.

Q. Was that before the District did anything? A. Yes, sir; that was a year or so—a year or so before the District did anything at all. I think the second summer I did a lot more work on top of the first work before the District took it in charge.

Q. Who, do you say, has possession of that little triangular piece of ground that you gave in exchange for this piece of lot 291 that was carried into Thirty-seventh street? A. I considered the owners of lot 291 or their tenants, for they have been in possession ever since.

Mr. FORREST: The answer of the witness is objected to as stating conclusions of the witness and not stating facts.

92 Q. Do you know how they have been in possession? A. They have chicken pens and little buildings on it at the present time. It had at the last time I saw it.

Q. Since giving it up have you exercised or attempted to exercise any acts of ownership over it? A. Never.

Q. Do you remember when the District first did any work on Thirty-seventh street on this lot? A. I should say in about 1892.

Q. How much had been done there before that by you and Mr. Manogue? A. I suppose I must have spent seventy-five dollars in filling that lot, perhaps, to that time; that portion of it in Thirty-seventh street.

Mr. FORREST: That last question is objected to as assuming that Mr. Manogue ever did any work on that part of lot which has been taken for Thirty-seventh street.

Q. Did Mr. Manogue know that you did that work, Mr. Huidekoper—any work of filling in?

Mr. FORREST: That is objected to, as the witness has already answered that question.

A. I cannot answer that positively.

Q. What time of the year did you do the work that you did, Mr. Huidekoper? A. My recollection is that the first work that I did was in the fall of the year, and then that I did some more work on it in the following spring.

Q. Now, when did the District—— A. After that the District took the matter in charge and have worked more or less each year upon it.

93 Q. What was the situation of that piece of lot—that part of lot 291—before you commenced to do anything about it?

Mr. FORREST: That is objected to as immaterial.

Q. The condition of it was—was it level ground? A. No; as I have said previously, it was very swampy indeed, and the stream overflowed some months and made it a very poor piece of ground. I have a little corner at the extreme southeast corner.

Q. Was there any alley or street in that *at that* place before Thirty-seventh street was open up there?

Mr. FORREST: That is objected to.

A. This lot faced on Back street.

Q. How wide is Back street? A. Sixty feet, I think.

Q. Was Back street at that grade at that point?

Mr. FORREST: Objected to as immaterial.

A. Back street two or three years prior to that time was only about ten feet in width at certain points, with five or six houses between this lot and Madison street on the south, and was so narrow that only a wagon could pass, and it was my persistent efforts to have the street properly opened that Engineer Commissioner Ludlow had the matter surveyed, and finally we got all the buildings removed and got the street opened as it is today, but practically there has not been any work done on Back street up to that point for the last—since I

supposed the street was opened originally—opened nearly one hundred year- ago.

Mr. FORREST: The answer of the witness is objected to as immaterial.

94 Q. Mr. Huidekoper, had lot 291 a front on any other street than Back street?

Mr. FORREST: Same objection.

A. No; it had not.

Q. Only outlet? A. Only outlet, and most of the travel in that section went up to Schneider's lane to the hill and out on Thirty-second street, or High street.

Q. Now, the opening of Thirty-seventh street—how does that effect it?

Mr. FORREST: Objected to as immaterial.

A. The opening of Thirty-seventh street has put it upon a through street, and one that is improved and has been improved very much in the last few years; and it gave this lot a frontage of some thirty-eight feet or more on this through street as well as the frontage that it was to have on the street running at right angles to Thirty-seventh street.

Mr. FORREST: Same objection to the answer.

Q. What is the full width of this Thirty-seventh street? A. Sixty feet.

Q. Now, what is the nature of the improvements that the District made there? A. The District had done some work on Thirty-seventh street, and I have done a great deal more. I have raised during the last two years and taken out a sag and raised it at one point twenty-one feet, and I am doing some work on it now, and I got an appropriation through Congress this winter to expend thirty-
95 five hundred dollars on the putting of the street in good order for the accruing fiscal year, as well as having passed three acts of Congress and two items in appropriation bills to get Thirty-seventh street condemned from Back street to Tennellytown road to make it a through avenue. That improvement comes to sixteen thousand dollars.

Mr. FORREST: The answer is objected to as immaterial.

Q. When was the first time, Mr. Huidekoper, that you learned that Mr. Manogue did not propose to stand by his agreement and dedicate this part of lot—so much of lot 291 which is included—did not intend to dedicate so much of lot 291 as is required for Thirty-seventh street?

Mr. FORREST: That question is objected to as assuming that Mr. Manogue made any such agreement, which is denied, and in the next place as assuming that he ever made any such agreement, which is also denied, and the assumption of the question being gone,

I object to the question as stating facts that the record does not disclose.

A. I never heard of any suggestion that the agreement was not to be carried out as made with me until some time last year I got a letter from Mr. Oettinger.

Q. Well, now, up to that time what trouble *adn* expense had you been put to?

Mr. FORREST: Objected to as immaterial. He is not a party to this record and the District is the only one held responsible for improvements to highways, and not the witness.

A. Well, I spent two thousand dollars on Thirty-seventh street during the last two years, so as to make it an easy grade running up.

96 Q. I wish you would state whether there was any objection to opening Thirty-seventh street through this lot 291—across the end of lot 291—that you know of prior to this letter that you received from Mr. Oettinger last year.

Mr. FORREST: The question is objected to for the reasons that if objection were made to the witness he is not the person to whom such objection should be made, and for the further reason that this is not the proper — to show whether objections were made to such a course or not.

A. I never heard of any objections being made.

Mr. FORREST: The answer is objected to as immaterial whether he heard of it or not.

Q. Were there ever any made to you?

Mr. FORREST: Tha- is objected to.

A. None were ever made to me until Mr. Oettinger wrote to me and asked for some appointment and practically asked for compensation for his lot.

Mr. FORREST: The answer is objected to as stating the contents of a paper not produced and its absence unaccounted for.

Q. Have you ever had conversation with him? A. I had a conversation with Mr. Oettinger, and he wanted pay for that portion of the lot which had been taken for Thirty-seventh street.

Q. What did you say to him? A. I believe I told him of the agreement, and that I had never heard of him as owner of the lot, and of my agreement with Mr. Manogue, and that I was ready to fulfill it and carry it out and make the deeds in pursuance of
97 the matter of that agreement.

Mr. FORREST: The answer is objected to as immaterial and incompetent and not throwing any light upon the issues involved herein.

Q. Do you know who was in possession of the land that you surrendered at that time?

Mr. FORREST: Objected to as assuming that there was a surrender of land to any one.

A. I do not know who absolutely was in possession; but as it was thrown open and connected with the lot, I assumed the lessee of the lot was in possession——

Mr. FORREST: The assumption of the witness is objected to as not evidence.

Q. Was your land within the same enclosure as lot 291—the same fence? A. Yes, sir.

Q. Occupied by the same tenant, as far as you know? A. Yes, sir.

Q. Do you know how long the piece of land that you surrendered in consideration of the part of lot 291 that was to go into Thirty-seventh street has been within the enclosure of lot 291?

Mr. FORREST: The question is objected to as having the same faults as the other questions.

A. For several years.

98 Cross-examination.

By Mr. FORREST:

Q. Mr. Huidekoper, between the New Cut road and the south line of lot 391 you are the owner of considerable property, I believe, are you not? A. Yes, sir.

Q. A good part of that property faces on what is known as Thirty-seventh street extended north from New Cut road? A. There is a great deal of that property; yes, sir; lots facing on that street.

Q. And I understand the improvement of Thirty-seventh street is a benefit to your property? A. Yes, sir; certainly, or I would not have made them.

Q. Your interest has prompted you more or less in seeing that Thirty-seventh street was properly improved and extended as far as it can be and giving an outlet to you-property. That is true, is it not? A. It is a benefit to my property in expending money on it; yes, sir.

Q. Do you know any property north of lot 291 that would immediately front on Thirty-seventh street if extended? A. No, sir.

Q. Back street begins where from the east; does it begin on High or Thirty-second street going west? A. No, sir; it begins at Madison on the south.

Q. Does Madison street have an outlet to Thirty-second or Thirty-fifth streets? A. Yes, sir.

99 Q. So that going from Thirty-fifth street west there was an outlet to this lot 291 through Back street by means of Madison street? A. Yes, sir.

Q. At the time that you first made your purchases there was Madison street an extended street? A. Yes, sir; Madison street was about one hundred and twenty-five years old.

Q. That, of course, you state from the records or from your knowledge as obtained from the records? A. Yes, sir.

Q. What street is there, if you know, to the west of lot 291—that is, a street running north and south? A. Well, Back street, if you mean north and south, or, rather, northwest and southeast. Back street runs on up to the top of the hill.

Q. What is the outlet of Back street to the northwest and after passing lot 291? A. Well, it is some county road here at the top of the hill.

Q. Is that the county road that leads into Tunlaw road that runs north and south? A. That question isn't intelligible. There is Tunlaw road, I think that commences at the end of the Beatty and Hawkins subdivision and runs westwardly. That is the end of Back street.

Q. Doesn't Tunlaw road begin at the extremity of Canal 100 road north and then turn northeasterly, turning into Tennallytown road? A. I cannot tell you.

Q. Do you remember when it was that you first spoke to Mr. Manogue about this matter of the extension of Thirty-seventh street through lot 291? A. It was some time in 1889 or the beginning of 1890.

Q. The beginning of 1890? A. Yes, sir.

Q. And at that time what was the condition of lot 291, as to being fenced? Was there a fence on the eastern portion of it? A. There was a rickety fence on the eastern portion along Back street and also along the south end—also along the south side, I should say.

Q. And at what time was that fence removed, and by whom, if you know? A. I think Mr. Blundon removed it; that is my recollection.

Q. Do you remember when it was? A. I should say it was in the fall of 1890.

Q. At the time of the removal of that fence had you had any conversation with Mr. Manogue about this agreement that you speak of? A. Yes, sir.

Q. And the agreement, as you understood it, was the agreement that you have testified to? A. Yes, sir.

Q. Had you any connection with this agreement? Did you know from Mr. Manogue what his interest was in that property? 101 A. No, sir; I did not. I understood Mr. Manogue had bought the property, although there was some one interested with him, and I understood very distinctly that he spoke for the parties in the matter. I treated him as the owner of the lot.

Q. My question was whether you knew, either from him or from the record, what his interest was in this lot. A. I never saw the record, but I understood from him.

Q. Did he tell you who was interested with him in the lot? A. He never did.

Q. What time did you first know that any one else had an interest in that lot? A. Well, I knew at the time that there were others interested in the property with Mr. Manogue.

Q. Well, now, you have spoken of receiving a letter from Mr. Oettinger? A. Yes, sir.

Q. Prior to the receipt of that letter, did you know that Mr. Oettinger claimed an interest in that property? A. No, sir; I did not.

Q. And during your talks with Mr. Manogue, did he ever show you any paper or writing or anything that he was authorized to act both for himself and for his co-owners? A. He never showed me any paper of that kind.

Q. Was there any writing between you with reference to
102 this dedication? A. There never was any writing or any written agreement in regard to the matter.

Q. Did he in his conversation with you say at any time that he was authorized by his co-owner or co-owners to make any such agreement that you propose? A. At one time he said to me that he thought that I ought to give that whole of the west-bound street, which I did not agree with at the time, and he afterwards came back and agreed with me in regard to the matter just as we had talked over it before—that was that I should give half for the street and they give half. I believe he was present at the time I had Mr. Brewer run the line in accordance with that understanding.

Q. That is, if I understand you correctly, you were to give one-half of the property for the street running west to Thirty-seventh street on the south, and he was to give the other half to the north? A. Yes, sir.

Q. For such a street? A. Yes, sir.

Q. And the other half was to come from lot 291? A. Yes, sir.

Q. And that in addition to carrying out your understanding about the matter you were to give so much of your property at the northeast corner as would compose your one-half of the whole that was given for the street, that is at the northeast corner, with reference to the triangle that you spoke of? A. I do not get your question quite distinctly, per—

103 Q. Let me put in another way. You spoke of having given some portion of your property that you claimed to have been taken possession of by the owners of lot 291. Now, that portion of that property was given in consideration of what on the part of the owners of lot 291? A. That portion of the property was given in consideration of the ground that Thirty-seventh street was to go through lot 291, and the amount of ground that I was to donate was the amount of ground to make that up, and its full amount running to the centre of the street running at right angles to Thirty-seventh street.

Q. Well, do I understand that you were only to compensate for one-half of the property that was given by 291 for Thirty-seventh street? A. No, sir.

Q. For the whole half? A. I was to compensate for the whole half for the opening of Thirty-seventh street running westwardly. They were to give half of the street and I was to give half of it, and of course they were to occupy some of the ground which I gave.

Q. Let me see if I understand you correctly. You were to dedicate a quantity of land sufficient to reimburse the owners of lot

291 for what they gave for Thirty-seventh street to be made of half of the street that was extended around from Thirty-seventh street and this triangular piece that you spoke of. Is that right? A.

104 Yes, sir; that is practically right. In other *owrds*, they were to give four hundred feet frontage on this street running east and west, and were to give half of that ground to that street and I was to give ground—practically the amount—I was to give him practically 5,756 feet of ground from off of lot 290 to compensate for ground taken for Thirty-seventh street.

Mr. THOMAS: For lot 291?

Mr. FORREST: That is right, Mr. Thomas.

A. And that portion after what was taken from 291 for the street—then we were to open a street westwardly, and each was to give half.

Q. And that portion of 290 was taken from what part? Could you show anything on that plat, in some way? A. Yes, sir; it was to be taken from what practically—taken from a little piece—taken from what practically was embraced in this lot line to the centre of that street. Then we each were to give half; they were to give half and I was to give half for the street opened westwardly.

Q. Did Mr. Manogue tell you in the course of these negotiations that his co-owner in lot 291 refused to give any part of lot 291 for the opening of a street to the west of Thirty-seventh street? A. He did not.

Q. Never at any time? A. Never.

105 Q. And it was not on account of that fact, among others, that the negotiations fell through, so far as keeping this agreement, as you understood it? A. No, sir; I suppose they fell through when Mr. Manogue got in trouble; I could not reach him and I could not get him down to any matter.

Q. When was that you could not reach Mr. Manogue? A. Well, he did not reply to my letters in the early part of 1893, when I sent him a description, and I sent him a suggested deed that I would execute a little after that time.

Q. In 1892 and 1893 you saw Mr. Manogue pretty frequently, didn't you? A. I don't know how often.

Q. You visited him quite frequently when his office was in the same building—where the District building is now? Did you know he was on the third story of that building? A. No, sir; I never visited Mr. Manogue in any office that I recollect of except when his office was right opposite the police court.

Q. His office 400 or 402 Sixth street? A. 402 Sixth street. I never saw him at any other office that I remember. I never saw Mr. Manogue at any other office that I recollect.

Q. Was this not the agreement that was attempted to be entered into by you and Mr. Manogue, to wit (quoting at page 23 of Mr. Manogue's testimony): "Mr. Huidekoper suggested that we should join in the dedication of the necessary amount of gr-und to lot two hundred and ninety-one, Mr. Oettinger and myself, to extend Thirty-

seventh street in a straight line, and he offered to give a corresponding amount of ground for the ground taken in the extension of Thirty-seventh street through our property, and also to extend the street east, running east from Thirty-seventh street." Was that right? A. No, sir; never.

Q. And was not this also the fact that appeared in your conversations or negotiations with Mr. Manogue (quoting at page 23 of Mr. Manogue's testimony): "And the amount of ground to be given by Mr. Huidekoper was to be connected with the southeast portion of lot two hundred and ninety-one, so that the street he (meaning yourself) proposed would run along the south line of lot two hundred and ninety-one, thereby giving Mr. Oettinger and myself a frontage on this proposed street for the entire depth of our lot, some five hundred feet (500)?" A. No, sir; the street was to run at right angles to Thirty-seventh street and the south line of lot two hundred and ninety-one—doesn't the line show you enough to suggest that the line should run with the line—the south line of two hundred and ninety-one?

Q. Well, was it your recollection that the street was to run as indicated or marked upon this plat within the road lines to the south of the line marked two hundred and twenty-two feet of lot 291? A. Yes, sir; that is the general allegation of the matter. I cannot verify this, of course, because I have not the surveyor's map here to do it with.

107 Q. Then if that was the proposed street for a good portion of the western terminus of it, it would take its lines entirely from lot 291? A. The calculation was made so that the ground exchanged gave the full complement to the lot 291 to what it had originally to the centre of that street, then that they were to give this portion of it for the street, and I was to give this portion of it and I was to take that portion of the ground also running to the centre line.

Q. Well, according to the proposed street, was any part of lot 291 to be to the south of the south line of the proposed street? A. Yes, sir; that was to come to me—to be deeded to me and to be taken in consideration to get at the proper quantity that they were to receive.

Q. How much was that to be? A. Well, I should say 56 or 57 feet. It was to be worked out by the surveyors.

Q. So that in addition to the giving, as you claim, the north half of the proposed street running west and the land for Thirty-seventh street off of lot 291 was also to be taken thereof to the south and the south lines of the streets running west? A. Yes, sir; with the Thirty-seventh Street property I was to give the full amount of ground.

Q. Do you remember when it was—what year it was—that you filled up a portion of this ground which you call swampy ground? A. Well, from general recollection, I think it was in the fall of 1890.

108 Q. The fall of 1890? A. That is my present recollection.

Q. That had been swampy ground for how long, Mr. Huidekoper? A. I could not tell you, sir.

Q. I mean so long as you had property bordering on or next to Thirty-seventh street, south of lot 291, the ground had been in that condition practically? A. Yes, sir; I had been over ground at that time for about three years.

Q. And before the opening of Thirty-seventh street, as I understand you, lot 291 had its entire frontage on Back street? A. Yes, sir.

Q. And Back street, as I understand you, was open to what width in 1890, if you recollect? When I say opened I mean opened at that time for navigation. You have already stated the original width of the street. A. I could not give you any date or year; it was during the time that Colonel Ludlow was here, and if you can tell me when he was here as Commissioner I could tell you exactly, because I had the—it was surveyed, at my request, under Colonel Ludlow and then opened to the public.

Q. Was it opened to the public during Colonel Ludlow's administration? A. Mostly; yes, sir. Afterwards I had some things done under Rossell. They had some houses removed.

109 Q. During the administration of Colonel Ludlow, if you recollect, to what extent was it opened? A. I moved all fences back of the Voigt place and some in some places forty feet.

Q. Was the Voigt place to the south of this or in what direction to lot 291? A. The Voigt place is a place to the southeast of lot 291, facing on Back street.

Q. Well, now, could you tell me, as near as you get at it from your best recollections during Ludlow's administration as Engineer Commissioner of the District of Columbia, what the width of that street was as it was opened for navigation in front of this lot? A. Sixty feet.

Q. Sixth feet was its complete width? A. Yes, sir.

Q. What is the actual width for purposes of navigation? A. It was opened for sixty feet at some points.

Q. How was it in front of this lot? A. I should say it was sixty feet.

Q. How south of this lot, to the point where it reaches Madison street? A. Most of the way sixty feet; there may have been some buildings on it which we afterwards had removed.

Q. Well, do you know or do you recollect that Commissioner Ludlow was Commissioner in 1887 and 1888, when Mr. Wheatly was also Commissioner of the District; don't you remember that?

110 A. I do.

Q. And that Colonel Ludlow was followed by Captain Roessle? A. Yes, sir; I cannot remember the exact date.

Q. Now, it appears in these papers here, Mr. Huidekoper, upon the surveyor's plat there appears to — what purpo-ts to be a dedication by you and your wife, Mrs. Virginia Huidekoper, of part of lot 291 for the extension of Thirty-seventh street? A. Yes, sir.

Q. At that time, except as you have sta-ed, you had no authority from Mr. Manogue or his co-owners to make such a dedication? A.

When we signed the plat book we did not intend to make such a dedication. The original map which has the Commissioners' signatures upon it, in the office of the surveyor, explaining to the south of lot 291 where we could really dedicate or intend to make it to 291.

Q. It appears on the record that you did purport to *mak* make such a de-dication signed by yourself and wife, respectively, for this part of lot 291, and is said to be a dedication for Thirty-seventh street. Of course, necessarily, you looked at the plat before you signed it? A. Yes, sir.

Q. In regard to that dedication you had no authority from the owners of lot 291, except as you have stated in your talk and conversation and your agreement, as you have stated, with Mr. 111 Manogue, that was the only authority, was it not? A. I want to say distinctly now, neither I nor my wife had the remotest idea of dedicating anything except what we owned to the south of lot 291.

Q. Was your attention ever called to the fact that the plat as signed by you purported to make such a dedication? A. Never, until I saw it in Mr. Manogue's testimony.

Q. Did you go to the surveyor's office? A. I went then to the surveyor's office and confirmed my impression in regard to the original map which we made the dedication upon and which the Commissioners had signed, and found it as I had expected.

Q. Did you find such a dedication as Mr. Manogue testified to? A. I did find the appearance of it on the surveyor's—on the county plat book.

Q. Well, what do you mean, Mr. Huidekoper, by the appearance of it? As a matter of fact, did it not appear there as having been a dedication of lot 291? A. It does, technically. It appears that we made a dedication of lot 291 also.

Q. When did you notice for the first time that anybody had taken possession of or claimed to have taken possession of any part of your property to the south of lot 291—immediately to the south of lot 291? A. About nine years ago.

Q. Nine years ago? A. I should think so.

112 Q. Did you at any time know who the tenants were of that property? A. Never.

Q. Was there a tenant on the property at that time? A. Yes, sir.

Q. And have you not frequently visited there since you first noticed it? A. I visited there numbers of times.

Q. You say there were buildings upon this part that you claimed to have been taken possession of? A. Little chicken-coops were there. It is in occupation as the rest of the property is.

Q. Was there a fence inclosing it? A. I don't remember how much of a fence was there.

Q. Was there any fence to the south of this part that you say was fenced in? A. I think so.

Q. Are you certain of that, Mr. Huidekoper? A. I do not say positively, but my impression is there is.

Q. What sort of a fence is it? A. Well, it is not very much of a

fence that I recollect that was around the lot. It was a very poor one.

Q. What did it consist of? A. I really cannot tell you.

Q. Was it a post fence or was it a wire fence or what sort of a fence was it? A. Well, I cannot tell you exactly. I think it is a wooden fence. I think there is one there today.

113 Q. This fence that you speak of encloses, as I understand you, that portion that you say has been taken from lot 291?

A. It encloses the southeast—it encloses the triangular piece in between lot 291, on Thirty-seventh street, and the street which I have partly graded, running westwardly.

Q. Does it include any part of lot 291—290 I should say? A. Yes, sir; it does.

Q. When did the District first do any work upon Thirty-seventh street to the north of lot 290? A. I should say it was about in 1892.

Q. 1892? A. That is the best of my recollection.

Q. Do you know when they finished it? A. They have been doing some on it since that time.

Q. What did the improvement consist of in 1892? A. They put some gravel down and did some work upon what I had previously done—they did some work on what I had previously done and made a better road of it. They have done work on it several times since, notably after the opening of Thirty-seventh street from Back street to the Tennallytown road.

Q. As a matter of fact, north of this lot 290 and toward Tenallytown road the property for the street was acquired by condemnation, Mr. Huidekoper? A. It was, sir.

114 Q. And, to go back to the recording of this plat again, the recording of that plat that you have spoken of was a mistake on your part; you had no intention of dedicating that part? A. No, sir; I had no power personally to dedicate it. It was done with the idea that the plat should be signed by Mr. Manogue and the others, and, secondly, was prepared on the books in that way.

Q. So far as it pretends to indicate that you had dedicated any part of lot 291, that was not your intention, was it? A. I repudiate any intention of a personal dedication of 291.

Q. But I say, so far as the plat appears to indicate such, it is a mistake upon your part? A. Yes, sir; it is a mistake.

Q. So far as you are concerned, as I understand you, Mr. Huidekoper, this agreement that you have said that you had with Mr. Manogue fell through because the parties did not carry out their part of the contract? A. I did not consider it fell through.

Q. They did not dedicate? A. I did not consider it fell through, for I allowed them to go in possession for the use of the public. I graded it for the public, and the District has taken possession and improved it ever since for public use.

Q. Do you know that the District has no actual possession of it now, don't you? A. Why, I saw some fellow has put some little

four or five posts around a little part of it and attached wire to it.

115 Q. That same fellow put posts there around how much of it? A. Less than half of it.

Q. Will you indicate upon this plat how much he has covered by these posts? A. I should say you put your posts——

Mr. FORREST: They are not my posts.

A. (continuing:) Well, whoever did it then. In about that location (indicating) and attached a wire to them. That was all that was ever done.

Q. When did you first see that property after those posts and wires were put up there? A. I should say some time last year.

Q. Did you see it there in 1897? A. I cannot recollect that I did. I cannot recollect when I first did see them.

Q. Have the sidewalks been laid on both sides of Thirty-seventh street? A. No, sir.

Q. Guttering been laid? A. No, sir; but there are one or two little pieces put in—no, the guttering has not been laid. In south of Back stree- one or two pieces of guttering which Mr. Blundon put in for me. It is guttered north from there to the Tennellytown road.

Q. Have you laid out the street to the full depth of lot 291, running west to Thirty-seventh street? A. Do you mean, have I graded it, or what?

116 Q. Is the street opened west to any width, and, if so, what, from Thirty-seventh street to the full depth of lot 291? A. No, sir; it is only graded part the way—graded a little way east—not up as far as the south line of lot 291.

Q. And what depth is that from the west from Thirty-seventh street? A. One hundred and fifty—two hundred feet; I cannot recollect just exactly.

Q. And beyond where it reaches south to lot 291 nothing has been done? A. No, sir; nothing has been done.

Q. Is it passable to 291? A. Well, it — rather steep. There is some earth taken out to make it in the form of a street.

Q. Could it be used for the passage of vehicles? A. It could be used, but it is very steep.

Q. Well, there is quite a hill there? A. Yes, sir; there is.

Q. Is it fenced on the east or on the west line of Thirty-seventh street? A. I do not remember. I do not remember how far down the cross-fence runs.

Q. Do you remember the fence was removed at that point where this proposed street would strike Thirty-seventh street on the west? A. Yes, sir; the fence was removed. I put pipe in and conveyed the guttering—crossed the sidewalk there.

Q. Is there any fence, then, on the west side of Thirty-
117 seventh street? A. In front of this street?

Q. In front of this proposed street. A. No, sir.

Q. When was that fence removed? A. It was removed at the

time we were doing the grading—going up to the hill—which I suppose was some time in 1890; that is my recollection.

Q. Before you had this agreement with Mr. Manogue that you claim? A. It was practically in pursuance with that agreement.

Q. Have you the letter that Mr. Oettinger wrote you about a year ago? A. I have it, but please do not ask me to find it, I have moved about so much.

Q. Do you remember what it was about? A. I cannot recollect exactly.

Q. Could you recollect whether it was—what season of the year it was, at least? A. No; I do not; but my general recollection is that it was early in last year.

Q. Early in the year of 1898? A. That is my recollection. My papers are so scattered about just now I cannot find it.

Q. As to whether any objections were made to the proper authorities of the District of Columbia about using this property, as I understand you, you have no knowledge, Mr. Huidekoper? A.

No, sir.

118 Q. All you know is what transacted personally between yourself and Mr. Manogue? A. Yes, sir.

Q. This little stable that has been referred to, was that within the line of the land taken for Thirty-seventh street for lot 291? A. Yes, sir.

Q. Who had that removed? A. I think we tore it down.

Q. Do you remember a house that was on this property other than that? A. A house that is on it?

Q. That was on it at that time. A. I remember a house that is on it now.

Q. Was not there a house on it at that time? A. No, sir.

Q. No dwelling-house? A. Not that I know of.

Mr. DUVALL: He does not understand your question.

Q. When did you first see the house on that property? A. It has been there, the present house, ever since I was in Washington—the last fifteen years.

Q. My question was directed to the fact whether or not there was a house upon that property when you first talked with Mr. Manogue about this proposed street. A. There was a house there and it is there now—the same house.

119 Q. How close is that to the line of Thirty-seventh street as extended here through that property? A. I think about six or eight feet, perhaps three or five; I cannot give you exactly. I remember where the *satke* was. It was very close to the foot of that tree. I cannot tell whether it was five or six feet.

Redirect examination.

By Mr. THOMAS:

Q. Mr. Huidekoper, I wish you would state whether if you had supposed that that agreement with Mr. Manogue was not going to—observed or carried out you would have taken the position you did and expended money and labor upon that street.

Mr. FORREST: That is objected to as being immaterial what the witness may have supposed and may have done under certain contemplated or supposed circumstances. It is further objected — because if Mr. Huidekoper saw fit to expend his own money in improving Thirty-seventh street that is a matter of his own. It is something which the complainant had nothing to do with.

A. I would not have expended the money that I have on Thirty-seventh street unless that portion of lot 291 had been acquired so as to make the street continuous one. I have spent five years' time in passing three acts of Congress and two items in appropriation bills to get the appropriation either to have condemned Thirty-seventh street from Back street to the Tennellytown road or the amount that I have expended in the last two or three years on Thirty-seventh street to make it a fine street.

Mr. FORREST: The answer of the witness is objected to as immaterial.

Q. This scheme, as I understand it, with Mr. Manogue and his associates, that they were to give part of lot 291 for the purposes of Thirty-seventh street, in consideration of your giving an equivalent amount of ground for another street which would run at right angles to it—an equivalent amount of ground, which you specified, and the opening up of that street at right angles with Thirty-seventh street, would be to make lot 291 a corner lot, would it?

Mr. FORREST: That is objected to as immaterial.

A. It would.

Q. Also to put it on a regular street, whereas it would practically be on a narrow street or an alley?

Mr. FORREST: That is objected to for the reason that the question is very leading, and in the first place the counsel is testifying instead of the witness, and in the second place it is assuming that Back street is an alley, whereas it is a street and has been for over one hundred years. The witness has testified to a street sixty feet in width.

121 Recross-examination.

By Mr. FORREST:

Q. When did you begin the improvement or spending your own money for the improvement of Thirty-seventh street, Mr. Huidekoper, south of lot 291? A. Immediately south of lot 291 or any portion?

Q. All the way south of lot 291 towards the New Cut road. A. I made a subdivision of Burlieth in the early part of 1887, and I expended a considerable amount of money on Thirty-seventh street at that time. It was not until I opened in 1891—practically, until I opened to the public by dedication the sixty thousand feet south from Burlieth to the south end of lot 291 that I did very much work on that portion of it.

Q. Burlieth fronts on the New Cut road? A. Burlieth fronts on

the New Cut road, running up to the south end of the Beatty and Hawkins subdivision.

A. Well, now, north of the south end of Beatty and Hawkins' addition did you lay any money out for improvement of streets? A. I improved Thirty-seventh street after I opened it.

Q. When did you endeavor to have it opened up? A. I opened it up—absolute dedication in April, 1891.

Q. Prior to that time did you expend any money on its improvement? A. Some.

122 Q. How far north had you gone in that? A. I made it passable up to the south end of lot 291 and then pushed off at right angles to the road going into Back street to go on through.

Q. Did the opening of Thirty-seventh street through lot 291 make it any closer to the land therefor, to wit, Thirty-fifth street, than it was to Back street? A. Back street is not passable; Back street is not graded and there are ditches cut in it; there is a driveway you can get up a way; nobody ever goes that way.

Q. Well, how did the owners of property in that neighborhood where that street has stood for, say, one hundred years, reach Fayette or Thirty-fifth street? A. They went down — lane; that was just passable for a wagon.

Q. They could reach Thirty-fifth street that way? A. Yes, sir.

Q. And Thirty-fifth street or Fayette street is next to Thirty-second street, the main thoroughfare north? A. It is.

Q. In Georgetown? A. Yes, sir.

Q. The opening of Thirty-seventh street did not place lot 291 any closer? A. No, sir; it did not place it any closer, but placed it so they would not have to go up a seventy-five-foot hill over it and then go down again.

123 Q. Is it not quite a steep hill going south from lot 290 in order to reach Burlieth? A. It is graded, but less than two per cent.

Q. In some places it is more than that, especially as you reach the neighborhood of Burlieth? A. It might be three per cent., but I should not think it is more than that.

Q. As I understand, during the Ludlow administration, they did improve Back street? A. No, sir; I removed the buildings out of Back street, but they have never put a spade in the land.

Q. They opened it for the purposes of passage? A. They opened it by taking the fences down. I removed some of the fences on the Voigt place back forty feet because they were trespassing on the street to that extent. The buildings were taken off the street, but the city has never put a plow or a spade in there from that time to this.

Q. Well, did Roessell, in Back street, who succeeded Ludlow? A. He removed two or three more buildings which were allowed to remain there. They were poor people, and they were allowed to remain on it longer than Ludlow would let them.

Q. Did anybody at all use Back street for the purpose of reaching Fayette or Thirty-fifth street at that time? A. There was — lane

that was not over ten feet wide at some places. I have a map of the whole thing.

Q. But still it was used by the public, Mr. Huidekoper? A. Nobody ever came down through there; they always went across,
124 went across into Thirty-seventh street, the highway or Schneider's lane. And I have no doubt that the hollow was in that direction.

Q. Where did they go when they wanted to pass through by 291 before it was opened—where did they go then in order to go further north? A. From that Back street had been improved. I improved it partly and the District did partly. From there towards the top of the hill had been kept in an improved condition and is today, but from the crossing of Thirty-seventh street and Back street down to Madison there has not been a spade put in it.

Q. It was in an improved condition in front of this lot—Back street was? A. It was driveable—yes, sir—but you could hardly say—this lot is at the foot of the hill.

FREDERIC W. HUIDEKOPER.

Subscribed and signed by me for the witness, by consent and agreement of counsel, this 18 of May, 1899.

GEO. H. CALVERT, JR., *Examiner*.

125 JOSEPH A. BLUNDON, a witness of lawful age, being by me first duly sworn for and on behalf of the defendants, testified as follows:

By Mr. THOMAS:

Q. What is your name? A. Joseph A. Blundon.

Q. What is your business? A. Contractor.

Q. What sort of a contractor? A. General contractor—excavating and grading.

Q. Do you know Mr. Huidekoper? A. Yes, sir.

Q. I wish you would state whether you ever did any work for him on what is known as Thirty-seventh street, when you did it, and what was it you did.

Mr. FORREST: That is all objected to as immaterial.

A. I worked for about four years for Mr. Huidekoper on the subdivision of Burlieth—grading it down to about 1892.

Q. Did you ever do anything at Back street? A. Yes, sir; I graded and did some work on Back street and on Thirty-seventh street. Back street is intersected by Thirty-seventh street at Schneider's lane.

Q. Do you know of this lot 291 that belongs to Mr. Manogue and Mr. Oettinger? A. Yes, sir; I know the lot you refer to.

Q. Did you do any work for Mr. Huidekoper on that lot? A. I taken down the fence to the line of Thirty-seventh street through.

126 Q. Through there? A. Graded Thirty-seventh street through lot 291 to Back street.

Q. When did you do that? A. I did the first of it, I think, possibly in 1890. I think we widened it during the winter, and I went back in the spring and finished it up. I taken down the fences and the old buildings, and I piled the lumber up along the side of the house there.

Q. Do you mean lot 291? A. Yes, sir.

Mr. FORREST: That is objected to as leading.

Q. What sort of a fence did you remove; were the fences dilapidated? A. Pretty dilapidated and old; they were pretty dilapidated.

Q. About how much of lot 291 was taken into the street? A. That I do not know, the exact dimensions, although I was present when the surveyor ran the line there—Henry W. Brewer.

Q. Who was living on lot 291 at that time? A. I don't remember.

Q. There was a house on it and somebody living in it? A. Yes, sir; and a branch ran right down through the place.

Q. Branch running right down through the place? A. Yes, sir.

Q. In any part of this street—part of Thirty-seventh street?
127 A. Yes, sir; we had to change the branch in order to make the street.

Q. Well, now, do you know this piece of land that Mr. Huidekoper gave Mr. Manogue and his associates on the part of lot 290 adjoining lot— A. I don't know anything about that. I know where the other street was to go through.

Mr. FORREST: That is objected to as a voluntary statement on the witness' part.

Q. Do you know that (handing witness plat)? Look at this plat annexed to the complainant's bill and state where the fence on lot 291 was, whether the fence on lot 291 enclosed any part of lot 290. A. Where is Back street? Let us get Back street.

Q. Here it is (indicating). A. Here it is (indicating). There was a fence along there (indicating) that we pulled down.

Q. I want to know whether any of this land there that Mr. Huidekoper gave to Mr. Manogue and his associates is enclosed by the fence on that property. A. I don't know. I haven't seen it for several years.

Mr. FORREST: That last question is objected to as assuming that it is enclosed in this. He has already testified that he didn't know anything about it.

Q. Do you know anything about whether the District was doing any work on this lot 291? A. I know that they did make
128 some repairs on this street.

Q. When did they do it? A. Every year, some of it.

Q. Since when? A. Since 1892 or 1893. I don't know exactly—somewhere along about 1893.

Q. Do you know Mr. Manogue? A. Yes, sir.

Q. Do you — whether he knew whether your work was going on up there? A. Yes, sir; I seen Mr. Manogue up there.

Mr. FORREST: That is objected to.

A. I mean Thirty-seventh street.

Q. Whether the work of improving Thirty-seventh street in the vicinity of this lot 201 was going on? A. I don't know. While I was principally on Thirty-seventh street, some days I would come there and others not. I seen Mr. Manogue in Burlieth while I was doing grading there.

Mr. FORREST: That is objected to as immaterial.

Q. How close is Burlieth to this lot 291? A. Right here (indicating on plat).

Q. That is Mr. Huidekoper's land in here (indicating on plat)? He called that subdivision Burlieth? A. Yes, sir.

Q. Do you mean that Burlieth adjoins lot 291? A. No; I think Burlieth—the Voigt tract is between.

Q. Very near it?

Mr. FORREST: That is all very leading.

129 Q. About that stable that stood there. Was the stable disturbed? A. I pulled it down.

Q. What sort of a stable was that? A. Nothing more than a shed.

Q. Was it ancient or modern? A. It was pretty ancient; very dilapidated.

Q. About what was the value of it? A. I should suppose about fifteen or twenty dollars.

Q. About what was this fence worth? A. I don't remember about the fence. I don't think it was worth much.

Cross-examination.

By Mr. FORREST:

Q. How large was this shed that you speak of? A. I don't remember; about twelve or fifteen feet.

Q. About how long? A. Twelve feet one way and fifteen the other.

Q. One story? A. Yes, sir.

Q. Sure of that? A. Well, I am not positive.

Q. Don't you know it was two stories—it had a second story? A. I won't be positive. It has been some time.

130 Q. You cannot be positive about that? A. I won't be positive.

Q. Do you make a difference in the value of a one-story and a two-story building? —. How much, sir?

Q. You are on the witness stand. A. It would make a very little difference in an old frame building.

Q. Do you know how long the building had been there? A. No, sir; some time, though, judging from its appearance.

Q. Did you have to get out anything at the time you pulled it down; in other words, was it occupied lately? A. As far as — know, it was not occupied.

Q. Any stalls in it for horses? A. I think not.

Q. Do you remember about that? A. Not particularly.

Q. What do you say was the number of this lot through which you say extended Thirty-seventh street? 291 they were calling it here. A. Who called it?

Q. On the plat here. Do you know at the time you were working up there what the dimensions of lot 291 were? A. No, sir.

Q. Do you know that you were passing through lot 291?
131 A. I only know that I was passing through what was known as Mr. Manogue's property.

Q. Who told you that? A. It was generally understood by Mr. Huidekoper. He is the one who told me.

Q. How came he to tell you that? A. Only that he had made arrangements with Mr. Manogue to go through it.

Q. And that was the arrangement that he told you that he had with a Mr. Manogue? A. That is, he had permission to go through and for me to go on.

Q. When you went through there you did some pulling up? A. Yes, sir; I pulled down the fence and put a culvert across the branch.

Q. Was that a natural stream? A. Yes, sir.

Q. Where did it come from? A. It comes down from towards — down through the Kengla place.

Q. Did it pass in or by Madison street? A. I don't think it strikes Madison street.

Q. Where does it go? A. Down through Voigt's into Burlieth and into a sewer down below.

Q. How much filling did you do there at that time? A. I disremember. I think three or four feet.

Q. You have been a contractor for some years? A. Yes,
132 sir.

Q. And have done considerable work? A. The last thirty years; yes, sir.

Q. And have done considerable grading and filling? A. Yes, sir.

Q. In different parts of the District? A. Yes, sir.

Q. How are you able to locate the time you were up there? A. From the time I was up there to the time I got through.

Q. You were present when Mr. Huidekoper testified here today? A. Yes, sir.

Q. You heard him fix dates? A. Yes, sir.

Q. Do you remember the dates independently of that? A. I can get that, sir, and I can get it from the time I went to work for Mr. Huidekoper to the time I stopped.

Q. Have you any memorandum that will refresh your recollection as to the time? A. No, sir.

Q. Did you work for the District up there, or for Mr. Huidekoper?
A. For Mr. Huidekoper.

Q. Never did any work there for the District? A. No, sir.
133 Q. When did you complete the work for Mr. Huidekoper?
A. 1892.

Q. After that time was your attention directed to Thirty-seventh street? A. Except in a general way with Mr. Huidekoper to look after his subdivision.

Q. Has Mr. Huidekoper any subdivision within two or three hundred feet of lot 291? A. The Voigt tract runs down—have you a plat of Burlieth here?—the Voigt tract runs down near Burlieth.

Q. Well, Burlieth proper, or the main part of it, fronts on the New Cut road? A. Yes, sir.

Q. That is where it started? A. Yes, sir; the old Cox place.

Q. And the west on what is known as Story's place, over the hill?
A. Story's is near the corner.

Q. On the corner of the New Cut road, and then down west of Story's? A. It takes in part of Story's and Stuchicomb's place.

Q. Was there any work that you did upon that subdivision after you finished the grading and filling in for Mr. Huidekoper on Thirty-seventh street? A. I was there from 1888 until 1892, working most of the time on that subdivision. Mr. Oettinger's is on one street and this is on another.

Q. What I wish to get at is, you said that you had finished
134 the work on Thirty-seventh street in 1892, and after that time I especially want to know whether you did any work on Thirty-seventh street in the neighborhood of this lot. A. Mr. Huidekoper had me look after the streets generally.

Q. Then Mr. Huidekoper didn't do anything on Thirty-seventh street after the District had taken it in charge? A. I don't know the time that the District took it in charge. In 1892—I was there from 1888 to 1892. I had a carte-blanche to do what I saw fit. Part of the time I did work in the road. I didn't see him for a year.

Q. I want to get, Mr. Blundon, your recollection of what took you to Thirty-seventh street after 1892, when you had completed the work for Mr. Huidekoper. A. Mr. Huidekoper had asked me to keep a general lookout over Burlieth. I did anything that was necessary, and I said I stopped work there in 1892—that is, a majority of the work. I may have gone back a number of times after 1892 to make minor repairs for Mr. Huidekoper.

Q. As I understand you, Mr. Blundon, in your direct testimony you said you have no recollection of seeing Mr. Manogue there while the part of lot 291 that was attempted to be appropriated for a street was being improved? A. I saw Mr. Manogue in Burlieth a number of times while the improvements were going on.

Q. My question is, Mr. Blundon—I am not talking about Burlieth. You said in your direct examination you have no recollection of seeing Mr. Manogue while any part of this lot 291 that has
135 been sought to be taken for Thirty-seventh street was being improved in any way? A. I don't know that I saw Mr. Manogue while that particular work was going on.

Q. Do you remember how much of a fence was there when you removed it—that is, how many sides of lot 291 it took in? A. How many fronts—I moved the front fence out on Back street.

Q. Have you any recollection of removing a fence going north on Thirty-seventh street? A. No, sir; there may possibly have been a fence between Voigt's and that place.

Q. But you haven't any recollection of that? A. No, sir; I remember taking the fence on Back street down and piling it up near this old house.

JOSEPH A. BLUNDON.

Subscribed and signed by me *by* the witness, by consent and agreement of counsel, this 18 day of May, 1899.

GEO. H. CALVERT, JR., *Examiner*.

Hereupon the further taking of testimony in this cause was adjourned until Saturday, the 25th day of March, 1899, at twelve thirty o'clock.

GEO. H. CALVERT, JR., *Examiner*.

136 WASHINGTON, D. C., *March 25th*, 1899—12.30 o'clock.

Met, pursuant to adjournment, at the law offices of S. T. Thomas, Esq., 452 D street northwest, to take further testimony for and on behalf of the defendant.

Present: Edwin Forrest, Esq., for complainant; Messrs. Thomas and Duvall, for defendant; examiner and witness.

Whereupon FREDERIC W. HUIDEKOPER, a witness heretofore, being recalled for further cross-examination, testified as follows:

By Mr. FORREST:

Q. Before I show you this letter, Mr. Huidekoper, in these negotiations that you had with Mr. Manogue, was it intended for the purpose of consummating the same that any papers should be exchanged in the way of deeds or other writings? A. It was intended that Mr. Manogue and his parties should make a deed of certain parts of lot 291, and that I should make a deed of part of lot 290. They should make a deed to me, and that I should make a deed to them in exchange.

Q. Well, in what way, then, if there was a deed of exchange, the deeds when received of those parts of 291 and 290, was the conveyance to be made to the public? A. The conveyance was not

137 to be made to me. It was to be to the public, and Mr. Manogue was to sign the dedication on the general books in the surveyor's office.

Q. Was it intended that there should be a conveyance for the portion of lot 290 that you were to give to Manogue and his associates in reimbursement for what they gave to the street? A. Yes, sir.

Q. Now, in all these deeds the conveyance by you—— A. No,
8—1016A

sir; the draft or the phraseology of the deeds was made by me and sent to Mr. Manogue.

Q. Do you remember when that was? A. Yes, sir; that was in January, 1893. Finally, after that, the matter seemed to drop for some time. I sent him a copy or the suggestion of what should be the phraseology in his deed to me and what I would make to them.

Q. But those were never returned to you? — No, sir; those were never returned to me. I can furnish you a copy of that—that is, from my letter—if you desire it.

Q. I show you a letter dated December 9, 1892, and ask you whether that is in your handwriting. A. That is in my handwriting; that is my letter to Mr. Manogue.

Q. Look also at the letter dated March 22, 1893, and also the letter dated May 30th, 1893, and tell me, please, whether those also are in your handwriting. A. Yes, sir; that is my handwriting. That was written after the submission of the papers that I refer to. That is also.

138 Q. I notice the letter of March 22, 1893, is addressed to Mr. Manogue at Louisiana avenue. Does that in any way refresh your recollection as to whether you called to see him at Louisiana avenue, at his office? A. I should say that I never did. Mr. Forrest, I cannot, of course, positively remember, but I don't recollect of having seen him except on Sixth street.

Mr. FORREST: The letters referred to and identified by the witness I offer in evidence and ask that they may be properly marked.

Hereupon said letters are marked as Complainant's Exhibits G, H, and I, respectively.

Redirect examination.

By Mr. THOMAS:

Q. Mr. Huidekoper, look at this, purporting to be a map of Burlieth addition to West Washington, and state whether that correctly represents the relative situations of lot 291 and your subdivision of Burlieth (handing witness the map). A. Yes, sir.

Mr. FORREST: Just one moment, please. That question is objected to as not proper redirect examination, and therefore incompetent in the present stage of the case.

Mr. THOMAS: I recall Mr. Huidekoper for the purposes of this question.

139 Mr. FORREST: I object to the witness being recalled without leave of the court, as he has already testified fully.

Q. Having leave to bring the question in my direct examination, you say it is? A. Yes, sir; it is a map of Burlieth and also the lots called the Voigt land, extending from south of Beatty and Hawkins' subdivision to the south end of lot 291, which I purchased particularly for the purpose of having Thirty-seventh street extended, and it is that portion from this west line from Beatty and Hawkins'

subdivision to the south line of lot 291 which I and my wife dedicated for the extension of Thirty-seventh street.

Q. Does that map also show how Thirty-seventh street affects lot 290 ?

Mr. FORREST: That is objected to, as the map speaks for itself, the different lots being shown plainly upon it, and whatever it touches or affects is plainly indicated.

Mr. THOMAS: We file this map in connection with the testimony of Mr. Huidekoper.

Hereupon said map as filed by Mr. Thomas is marked as Exhibit No. —.

Recross-examination.

By Mr. FORREST:

Q. Mr. Huidekoper, you handed this map to Mr. Thomas this morning since you have been here in the witness-room this morning?

A. Yes, sir.

140 Q. Mr. Huidekoper, could you indicate by the number of these squares what parcels or what squares you owned in the year 1890 that bordered on Thirty-seventh street? A. I owned lots 1 and 30, in block 134; 1 and 6, in blocks 20, 21, 22, 23, 24, 25, and 26; all of block 138; lot 8 and 9, block 135; lots 8 and 9, block 142, and lots 1, 19, 20, 21, block 146, and lots 285, 286, 287, 288, 289, 290, of Beatty and Hawkins' addition to Georgetown, as it is called.

Q. All of the lots that you have referred to border upon Thirty-seventh street? A. Yes, sir; and the extension as made in 1891.

FREDERIC W. HUIDEKOPER.

Subscribed and signed by me for the witness, by consent and agreement of counsel, this 18 day of May, 1899.

GEO. H. CALVERT, JR., *Examiner*.

141 WASHINGTON, D. C., April 15, 1899—1 o'clock p. m.

Met, pursuant to agreement of counsel, at the law offices of S. T. Thomas, Esq., 452 D street N. W., to take further testimony for and on behalf of the defendant.

Present: Edwin Forrest, Esq., for complainant; S. T. Thomas, Esq., for defendant; examiner, and witness.

Whereupon HENRY W. BREWER, a witness of lawful age, being by me first duly sworn according to law for and on behalf of the defendant, testified as follows:

By Mr. THOMAS:

Q. What is your name? A. Henry W. Brewer.

Q. Mr. Brewer, what is your profession? A. I am a civil engineer, sir.

Q. Are you practicing your profession in the District of Columbia? A. Yes, sir.

Q. What, if anything, had you to do, Mr. Brewer, with the surveying or laying out of Thirty-seventh street or Back street, in Georgetown, through lot 291? You know lot 291, Mr. Brewer? A.

Yes, sir.

142 Q. The rear of lot 291? A. I made a plat of it for Mr. Huidekoper.

Q. Did you go upon the ground? A. Yes, sir.

Q. Did you make a survey? A. Yes, sir.

Q. Is this it (handing witness map)? A. Yes, sir; I believe this is it.

Q. Is that a copy of the plat you made? A. Yes, sir; it looks to be; that is about the general look of it.

Q. This shows lot 291? A. Yes, sir.

Q. And how is it effected by Back street? A. By Thirty-seventh street—Thirty-seventh street goes through it.

Q. What was the condition of the rear of that lot so far as it is effected—— A. The rear of it?

Q. Yes, sir; that lot so far as it is effected by Back street—I mean Thirty-seventh street. At the time you made *at the time you made* the survey was it occupied or enclosed; and, if so, by what? A. It had a fence on it, I think.

Q. What sort of a fence? A. Rather a rickety one. That fence showed the lines of the property.

Q. Were there any improvements within the lines of Thirty-
143 seventh street as extended over that lot? A. There was a house on the lot and the house is there now.

Q. Not within the lines of the street? A. No, sir; not within the lines of the street.

Q. Was there anything within the lines of the street? A. I could not say. I do not think there was. It has been a long time ago since I made this, and I have forgotten pretty much all about it—about the condition of it.

Q. Was there a highway there, beofre Thirty-seventh street was extended, of any kind? A. There Back street—Back street was a highway. Back street ran along the face of lot 291. Lot 291 faced on Back street and Thirty-seventh street ran into Back street and cut off a triangular portion of lot 291.

Q. Is it shown on that map? A. Yes, sir; it is shown here.

Q. Had there been any improvements at the time that you made that survey? A. Any improvements where, sir?

Q. Thirty-seventh street; don't you remember? A. I think Thirty-seventh street was graded through all that way.

Q. You mean graded? A. Yes, sir; it was cut through—it was not exactly graded. It was cut through and it was being used.

Q. Across the end? A. No; across the end square.

144 Q. Not across lot 291? A. No, sir; because there was a fence up by there.

Q. Now, do you know anything further about it, Mr. Brewer? A. No, sir; I ran another line across there.

Q. Where, in reference to this lot 291? A. Here below that (indicating).

Q. Did not touch lot 291? A. No, sir; I do not think it did. The line ran about along—the line ran across here (indicating).

Q. Do you know who did grade Thirty-seventh street that you speak of? A. No, sir; I do not.

Q. Do you know whether the District at the time you made that survey had done anything toward improving that street? A. Really I could not say. Mr. Huidekoper did a great deal of grading to his own place and is doing a great deal now. Whether the District did any previous to that time I could not say. I think since then they have done some.

Q. Do you know about when it was you did that work? A. I do not, sir. I do not know what time it was.

Q. Or about what year it was? A. No, sir.

Q. Can you tell by looking at this map? A. I suppose that is about the date. 1891 is the date on here.

Q. Since looking at that date what do you say? A. No,
145 sir; I would not say that is the date; I do not know; my memory is not good for dates and names without reference to something.

Q. Do you think it was before or after that date? A. It must have been a little before that; it must have been a little before because it was put on record at that time; it was in 1890 or 1891.

Q. Do you know Mr. Manogue? A. Yes, sir.

Q. Did you see him about there when you were doing that work? A. Mr. Manogue had a conversation with me. He asked me if I had finished—if I had made that plat; that is about all. I had nothing to do with him, I was working for Mr. Huidekoper.

Q. Do you know Mr. Oettinger, the complainant in this case? A. No, sir; I do not know that I ever saw him.

Q. Do you know when it was that Mr. Manogue spoke to you about that plat? A. It was about the time it was made. I hardly recollect the conversation I had with him. I know I had some. Mr. Manogue asked me about the plat, whether I had made it; that is all I can recollect.

Q. Is there anything else about this matter that you know anything about? A. No, sir; I do not know anything further than that. I made the plat for Mr. Huidekoper.

146 Cross-examination.

By Mr. FORREST:

Q. Where is the original of that plat, Mr. Brewer? A. Mr. Huidekoper must have it. I reckon maybe it is in the District surveyor's office.

Q. Mr. Brewer, as a matter of fact do you know where it is? A. No, sir.

Q. Do you know that is a correct copy of the original? A. I do not. It looks like it.

Q. Its general appearance seems to indicate it? A. Yes, sir.

Q. This conversation that you had with Mr. Manogue. Do you remember when that was? A. About the time that I did the work.

Q. Do you remember what he asked you about the matter? A. How far the work—if I had finished making the plat.

Q. Did you show him the plat? A. No, sir; I do not think I did. I know he was talking about it, but what he said I would not be sure of.

Q. Whatever work you did out there you did for Mr. Huidekoper? A. Yes, sir.

Q. And this road that you speak of running lines for went west from Thirty-seventh street to Ridge street? A. The old Ridge road, way out here (indicating).

147 Q. Where; out to the west of this property? A. Yes, sir.

Q. And the lines of that proposed street was south of lot 291? A. I do not recollect whether it took in any of this lot or not. It was run out.

Q. Who did you run that out for? A. For Mr. Huidekoper; that was a proposed street that he was going to make through there.

Q. Do you know when that was with reference to the making of this plat? A. No, sir; about the same time—something about the same time.

Q. That condition of affairs out there, as I understand you, prior to this, you haven't much recollection about? A. There was a fence along here (indicating).

Q. On the south of 291? A. Yes, sir; and a rather rickety one there (indicating).

Q. Along the east front of lot 291? A. Yes, sir (indicating).

Q. And the only improvement that you remember being upon that property is a house? A. Yes, sir; a house.

Q. That is the only thing that you remember being there? A. Yes, sir.

Q. And on the old Back street the whole front of lot 291 fronted?

A. Yes, sir.

148 Q. Before Thirty-seventh street was continued through lot 291, where did it strike Back street, if at all? A. It did not strike Back street at all. Thirty-seventh street was a street in the subdivision of Burlieth and it extended up through that portion of Beatty and Hawkins which Mr. Huidekoper purchased—this portion in here (indicating). Mr. Manogue was supposed to own them.

Q. You don't know who got lot 291? A. No, sir.

Q. When you refer to the portion in here (indicating), you refer to the property south of 291? A. Yes, sir.

Q. And on both sides of Thirty-seventh street? A. This line here (indicating), 286, 287, 288, 289, 290, that is extended through there.

Q. Didn't the northern point of Thirty-seventh street strike Back street before Thirty-seventh street was continued through 291? A. How is that?

Mr. FORREST: Read the question to the witness.

Hereupon the question is read over to the witness.

A. There was no Thirty-seventh street.

Q. Now, I understood you in your direct examination that before Thirty-seventh street was completed and run through lot 291 work had been done on Thirty-seventh south of lot 291 and up to 291?

A. Yes, sir.

149 Q. Before it was projected through lot 291 did not Thirty-seventh street at this northern terminus strike Back street or meet Back street? A. It says three feet there—it struck the south line of 291. That would be an answer to your question.

Q. Do you remember the District doing any grading on Thirty-seventh street? A. No, sir; it done grading here within a year or two.

Q. Haven't any recollection before that? A. No, sir; not before that.

Q. You say you fixed these dates, as I understand you, Mr. Brewer, as a fact, with this copy of the plat you have before you is marked on it the year 1891? A. Yes, sir.

Q. Independent of that plat you have no recollection of the dates? A. No, sir; I have not.

Q. And whether the year 1891 that appears upon that plat is the correct year you do not know independent of the plat? A. No, sir.

Redirect examination.

By Mr. THOMAS:

Q. Mr. Brewer, in this conversation you had with Mr. Manogue, he did not make any statement of what his interests were?

Mr. FORREST: I object to that as not redirect examination.

150 A. No, sir; not that I recollect.

Q. Do you know whether he owned lot 291 or had any interest in it? A. No, sir; I do not.

HENRY W. BREWER.

Subscribed and signed for the witness by me, by consent and agreement of counsel, this 18 day of May, 1899.

GEO. H. CALVERT, JR., *Examiner*.

Mr. FORREST: Does that conclude your case, Mr. Thomas?

Mr. THOMAS: Yes, sir; I think that is the end of it.

GEO. H. CALVERT, JR., *Examiner*.

151 & 152 DISTRICT OF COLUMBIA, ss:

I, George H. Calvert, Jr., an examiner in chancery, do hereby certify that the foregoing depositions of Frederic W. Huidekoper, Joseph A. Blundon, and Henry W. Brewer were duly taken down in shorthand before me and thereafter reduced to typewriting print; that said witnesses were by me first duly sworn to testify the truth, the whole truth, and nothing but the truth; that said depositions were signed by me for said witnesses by consent and agreement of counsel first had and obtained; that my fee taking said depositions is

\$52, which has been paid; that I am not of counsel for either of the parties and am not interested, either directly or indirectly, in the issue hereof.

GEO. H. CALVERT, JR.,
Examiner in Chancery.

Three witnesses; fee, \$52, paid; four exhibits.

GEO. H. CALVERT, JR., *Examiner.*

153 *Testimony on Behalf of Complainant in Rebuttal.*

Filed January 12, 1900.

In the Supreme Court of the District of Columbia.

HENRY OETTINGER	} No. —. Equity.
vs.	
DISTRICT OF COLUMBIA.	

Be it remembered that at an examination of witnesses begun and held, pursuant to notice, on Friday, the 7th day of July, A. D. 1899, at the office of Edwin Forrest, Esq., 319 Four-and-a-half street north-west, Washington, D. C., at which examination there were present Mr. Edwin Forrest, solicitor for the complainant; Mr. Henry Oettinger, the complainant herein, and the witnesses hereinafter noted, personally appeared before me, John E. McNally, an examiner in chancery of said court, the within witnesses, who, being called for and on behalf of the complainant and by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth touching the matters involved in the above-entitled cause, did depose and say what is hereinafter set out as said by them.

Previous to the examination of the witness Mr. Edwin Forrest, solicitor for the complainant, made the following statement:

I notified Mr. Duvall, the attorney for the District, in writing that I intended to take the testimony in this case on Wednesday, July 5th, 1899, at one o'clock p. m., and subsequently and on the
154 same day I received a request from him to put it at a later date, and by an understanding between Mr. Duvall and myself over the telephone an agreement was made whereby the testimony was to be taken today at 4 o'clock. I have waited for the presence of Mr. Duvall until 4.25 p. m., and he not having appeared nor given any reason for his non-appearance, I, at the request of my client, proceed to take testimony in rebuttal.

JAMES H. SCRIVENER, a witness of lawful age, produced by and on behalf of the complainant, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

Direct examination.

By Mr. FORREST:

Q. What is your occupation, Mr. Scrivener? A. Work in a livery stable, sir.

Q. Do you know where the property of Mr. Oettinger, the complainant in this case, is located—just beyond Georgetown? A. Yes, sir.

Q. Did you ever occupy that property? A. Yes, sir; I lived there three years.

Q. Do you know that portion of the property that the District has attempted to take for an extension of Thirty-seventh street? A. Yes, sir; that is that piece between the road and the branch.

Q. Is any part of that property that the District has sought
155 to take for an extension of that street swampy ground? A.

No, sir; there wasn't any swampy ground; that piece of ground between the branch and the road is clean up to the stable; there wasn't any swamp.

Q. Was it firm ground? A. Yes, sir; pretty good solid ground all the time.

Q. Were you living on the premises at the time that the District started to extend that street? A. No, sir; I wasn't there then. I heard right smart of talk about it. I moved away from there.

Q. How long before the District commenced to extend that street was it that you moved away from that property? A. Of course, I couldn't tell you that, sir. They were talking about it before I left. After I moved away I never went there again.

Q. When was it that you moved away from there? A. I never kept anything in my head. It has been somewheres along seven years since I left there, sir.

Q. Was the ground that was taken by the District for the extension of that street level ground or rolling ground? A. It was level ground right through there—no hills or nothing.

Q. What sort of soil was it—gravel, clay, or what? A. It was pretty much—kind of sandy and a little gravel together, you know. There wasn't much clay about it, because I worked it right smart.

Q. Do you remember the stable that was located within the line of the street that was afterward taken by the District? A. Yes, sir.

156 Q. What sort of a stable was that? A. It was a pretty good stable, sir. I stabled two horses and a cow and then had two wagons on the back part. The front part wasn't closed in. It was closed around the side.

Q. Was it a stable of more than one story? A. One story, sir. It was a pretty good stable when I left there.

Q. About what were the dimensions of that stable? Just approximate. A. My idea was—I think it was somewheres about twenty feet long and about six or near seven feet wide.

Q. What condition was it in when you left there? A. It was in pretty good condition when I left there.

Q. What, in your opinion, was the value of that at the time that you left? A. My idea of it—what I think—is about thirty-five or forty dollars, sir. I think that is the value of the stable.

Q. Do you think that a stable of that kind can be built for thirty-

five or forty dollars? A. Yes, sir; I think so. It was a pretty good stable, sir.

No cross-examination.

JAMES H. SCRIVENER.

Subscribed and sworn to before me this *by* day of July, A. D. 1899.

JNO. E. McNALLY,
Examiner in Chancery.

157 PETER McGEE, a witness of lawful age, produced by and on behalf of the complainant, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, was examined, and testified as follows:

Direct examination.

By Mr. FORREST:

Q. What is your occupation? A. I am a dairyman.

Q. Where do you reside now? A. I live on Mr. Oettinger's place.

Q. Mr. Oettinger, who is the complainant in this suit? A. Yes, sir.

Q. How long have you lived there? A. I moved there September, '91—the 4th of September, '91.

Q. Have you lived there ever since? A. Yes, sir.

Q. Do you know that part of the ground of Mr. Oettinger that has been fenced in lately by him after some trouble was had with the District about it? A. Yes, sir.

Q. Was any part of that ground swampy ground? A. No, sir.

Q. What was the character of the soil there? A. Most of it was solid sod and is today, excepting about where the stable stood; that they cut off.

Q. Within the limits of the street as they intend to extend it there was no swampy ground there, as I understand? A. No, sir.

158 Q. Right south of Mr. Oettinger's property, was there any use made of the property just adjoining Mr. Oettinger's property by you? A. No, sir; as soon as I moved there they started to cut the little street that goes across his property on the west at the top of the hill; but they stopped.

Q. They never completed that? A. No, sir.

Q. Something has been said about the use by you of a little piece or parcel or tract just south of Mr. Oettinger's property. What have you to say about that? A. I took that part on my own accord.

Q. What use do you make of it? A. None, except a chicken coop and a flower garden.

Q. Did you fence it in at all? A. No more than just for a chicken pen.

Q. Did you say anything to Mr. Oettinger about it? A. No, sir.

Q. Do you know Mr. Manogue, the gentleman sitting there? A. No, sir; I know his brother.

Q. You never said anything to him about it? A. No, sir.

Q. This was some little vacant tract there, was it? A. Yes, sir.

Q. And you used it for your own purposes? A. Yes, sir.

Q. And that you did of your own accord? A. Yes, sir.

Q. On the south side of Mr. Oettinger's property—was there a fence there? A. Yes, sir. There is a fence there across the
159 street. They started to run it across. There is a fence on the south side of that.

Q. And has been there ever since you have been there? A. Yes.

Q. And it has never been changed? A. No, sir.

Q. That is the fence that Mr. Oettinger put up where they expected or attempted to put the street; that fence is still there, isn't it? A. No, sir; I took it down because it fell down and I took it away because the wire had fell down and was in the way, and I was afraid that some person might cripple themselves or horses might hurt themselves, and I took it away.

Q. That you did because you were afraid that some one might be injured by it? A. Yes, sir.

Q. And that you did of your own accord? A. Yes, sir; I helped him to put it there and I taken it away.

Q. When you first began to rent this place, who did you pay the rent to, Mr. Oettinger or to some agent? A. I paid it to Mr. Fickling.

Q. Down to what time? A. I don't know what year. I couldn't tell that because I didn't keep time.

Q. After you stopped paying to Mr. Fickling, who did you
160 pay it to? A. Mr. Oettinger.

Q. How long have you been paying it to him? A. Ever since then.

Q. It has been a matter of how many years? A. It has been a matter of some years.

Q. You can't state how many? A. No, sir; but I have receipts home that will tell.

Q. Were you living in that place when the District attempted to cut that street through? A. I was.

Q. Do you remember a stable that was there? A. Yes, sir.

Q. What did the District do or the people who cut that street through do with the stable? A. When I left there, there was a stable there. I left there and went to Falls Church to finish out the year there, and when I came back the stable was gone, but what became of it I don't know. Some say that Mr. Blundon was the contractor and taken it.

Q. You saw the condition of that stable before you went away?
A. Yes, sir.

Q. Was it in fair condition—good condition? A. It was.

Q. How large a stable was it? A. It looked like to be able to hold a cow and two horses.

Q. How long was it in feet? A. I think it was from fifteen to twenty feet. It was a pretty good big-sized stable.

161 Q. You mean from fifteen to twenty feet in length? A. Yes, sir.

Q. And about how wide was it? A. Well, I don't know; about fourteen feet wide.

Q. Was there a loft or second story in the stable? A. I never paid any attention to the loft. It was just a one-sided thing and I never paid any attention to it.

Q. What was that stable worth, in your judgment? A. Well, if it had been mine I wouldn't have taken less than forty dollars for the plank?

PETER MCGEE.

Subscribed and sworn to before me this *by* — day of July, A. D. 1899.

JOHN J. McNALLY,
Examiner in Chancery.

HENRY OETTINGER, the complainant, being recalled, further testified as follows:

Q. Mr. Oettinger, you have already testified in this case, and testimony has been given by the defendant, through its witnesses, as to the condition of the ground upon this property and also the use of a certain tract belonging to one Huidekoper to the south of the property belonging to you. Just, in your own way, make a statement as to the character of the land taken by the District—as to whether the same was swampy or not—and also whether, with your knowledge and consent, any part of the property belonging to Huide-
162 koper has been used or occupied by your tenants? A. The land which was taken for the use of the street was not swampy. That part to the south is being used by Mr. McGee without my authority or consent whatever. To show that it is not swampy land, Mr. McGee came down to my place of business in January and wanted to buy part of that property and offered me twenty-five cents a square foot for it.

No cross-examination.

HENRY OETTINGER.

Subscribed and sworn to before me this — day of July, A. D. 1899.

JOHN E. McNALLY,
Examiner in Chancery.

WILLIAM H. MANOGUE, being recalled, testified as follows:

Direct examination.

By Mr. FORREST:

Q. You are the same William H. Manogue who has already testified in this case? A. I am.

Q. Mr. Frederick W. Huidekoper, in his testimony and on pages 6 and 7 thereof, has testified as follows: "I and my wife have signed that, and they not having signed it, it gives the inference that we

163 were dedicating lot 291 to the public, in which the original plat shows that we had no interest, and they having failed to do so the dedication, of course, only extends as far as our interest goes, and that was to the south side of lot 201." What have you to say as to that statement? A. As to that statement, I say that Mr. Huidekoper's signature to the plat of subdivision in the record office clouds the title to lot 291, because the certificate accompanying the dedication certifies that the parties signing are the owners of the land.

Q. Was that certificate made by Mr. Huidekoper with your knowledge and consent? A. No, sir; it was years afterwards that I chanced to observe it in the record office, as I have stated in my former testimony.

Q. He further testifies, as found on page 10 of the testimony on behalf of the defendant: "My impression is that I met Mr. Manogue there at one time. He gave me consent to go in and take possession, and to do the work there, and no objection was ever made while we were doing the work." What have you to say as to that statement? A. I have no recollection whatever of ever having authorized Mr. Huidekoper to enter into possession of any part of lot 291, as I knew I had no right to give such permission without the consent of Mr. Oettinger, my co-owner at that time, in the land.

Q. Did you, as a matter of fact, as stated by him, give your consent that he should go in and take possession of that property? A. I did not.

164 Q. On page 14 of the testimony of the same witness, in answer to a question put to him by counsel for the District, he says, "Well, I spent two thousand dollars on Thirty-seventh street during the last two years, so as to make it an easy grade running up." I will ask you whether or not, to your knowledge, the witness Huidekoper ever spent any such amount upon the street referred to in the neighborhood of the property of the complainant or in close proximity thereto, and what knowledge, if any, you have upon the subject? A. I am not able to state what amount Mr. Huidekoper spent upon grading Thirty-seventh street in the neighborhood of lot 291, but I am very sure that the sum of two thousand dollars was not spent in the immediate neighborhood of lot 291. Mr. Huidekoper frequently got allowances from the Commissioners and, I think, one or two appropriations from Congress for the grading of Thirty-seventh street, most of which grading was done way south of lot 291 and in the neighborhood of the New Cut road. This, of course, was done for the benefit of Mr. Huidekoper's property on both sides of Thirty-seventh street, he having many acres of land which could only be bought on the market by opening up and putting Thirty-seventh street upon grade.

Q. Mr. Huidekoper has further testified in this matter, on page five of his testimony, that he had conferences with you, and that you purported to be the owner, partly in your own right and as representative of the other owners of this property. Did you in your

conferences or conversations with him make such representations?
A. I never represented to Mr. Huidekoper that I was the owner
of lot 291, and always had it understood that another
165 party was interested with me in the ownership of the prop-
erty.

Q. He says further that you told him that you intended to build six small houses upon this property. What have you to say as to that? A. On one occasion Mr. Huidekoper suggested, as I was building houses in other parts of Georgetown, that the western portion of lot 291 was a beautiful site, and he suggested that the erection of cottages or houses similar to those built on that portion of Burlieth west of the present high school might be a good investment, and I think he furnished me sketches of some houses that he had in view of erecting on his property.

Q. He further testified as follows: "Mr. Manogue then allowed us to go upon this little triangle and to tear down the fence and to remove the miserable old shanty of a barn that was upon the matter, and Mr. Blundon here did the first work for me, making that street passable. Mr. Manogue, or his lessee or agents, took possession of part of the property that was facing on Thirty-seventh street, and just south of lot 291, and have been in possession of that ground ever since, as I considered, in pursuance of this agreement." What have you to say as to that statement? A. I have no recollection of any such agreement, and as a matter of fact never did make any such agreement with Mr. Huidekoper or any one else in reference to the tearing down of the barn and the occupation of that strip mentioned, and did not know of such occupation or removal of the barn until years afterwards.

166 Q. Then, as I understand you, no such arrangement was made upon your part with Mr. Huidekoper? A. None whatever.

Q. He further testifies: "By an agreement, subsequently or about that time, with Mr. Manogue, Mr. Brewer's lines as surveyed was plotted on the plot book in the surveyor's office as being the best method to dedicate also the interest in lot 291 to the public, and Mr. Manogue agreed with me that he or the representatives or owners would go and sign the plot book in the complete dedication of the right through to Back street." What have you to say as to that statement? A. I have no recollection of any such statement or any such occurrence.

Q. And according to your best recollection and information upon that subject, what have you to say as to the truth of that statement? A. I say that Mr. Huidekoper is mistaken, as I never made any such statement to him or any one else.

Q. He also testifies as follows: "I had no further communication from Mr. Manogue on the subject, although I wrote him two or three times after that writing that our agreement should be carried out, and that the deeds that he should prepare—have the deeds prepared and I would have others prepared for the exchange." After that he says: "I got no reply to any of those letters."

What have you to say as to that? A. My best recollection is that Mr. Huidekoper wrote me once or twice in reference to having deeds exchanged for the land, and that I called at 167 Mr. Huidekoper's office when he was receiver of the Richmond and Danville railroad and notified him of my inability to have Mr. Oettinger sign any papers in reference to the land without carrying out the arrangement he first suggested, which I have heretofore stated.

Q. Did you ever, upon the part of yourself or your co-owner, take possession of any property of Mr. Huidekoper in exchange for any property that was to be given for the extension of Thirty-seventh street? A. No, sir.

Q. And so far as you know, was the possession of any such property ever taken, either by you or by your co-owner or by the tenants of either of you? A. Not that I know of.

Q. As to Back street in the neighborhood of this property, what have you to say as to its width and the length of time, so far as the record discloses, that it has been a public street or thoroughfare?

A. Back street has been one of the regular streets of Georgetown for more than eighty years. Its width, I think, is forty or fifty feet, and to my recollection the last twenty years prior to the extension of Thirty-seventh street was used constantly by people in that section.

Q. Was it passable by teams? A. By teams and by pedestrians.

WILLIAM H. MANOGUE.

Subscribed and sworn to before me by — — — this — day of July, A. D. 1899.

JNO. E. McNALLY,
Examiner in Chancery.

168 Mr. Forrest, solicitor for the complainant, announces that complainant's testimony in rebuttal is closed.

I, John E. McNally, an examiner in chancery of the supreme court of the District of Columbia, do hereby certify that the foregoing depositions, being taken down in shorthand, were afterwards transcribed and written out; that I am not of kin or counsel to either party hereto and have no interest in the result of the cause at issue; that my fee for taking said depositions is ten dollars, which has been paid.

JOHN E. McNALLY,
Examiner in Chancery.

169

Decree Dismissing Bill, &c.

Filed June 28, 1900.

In the Supreme Court of the District of Columbia.

HENRY OETTINGER	}	Equity. No. 18571.
vs.		
THE DISTRICT OF COLUMBIA.		

This cause came on regularly for hearing upon the pleadings and proofs and was argued by counsel for the respective parties and duly considered by the court.

Whereupon it is by the court this 28th day of June, A. D. 1900, adjudged, ordered, and decreed that the bill of complaint filed herein be, and the same is hereby, dismissed with costs, to be taxed by the clerk.

By the court:

JOB BARNARD, *Justice.*

From the foregoing decree the complainant in open court prays an appeal to the Court of Appeals, which is allowed and the bond for costs accordingly fixed at one hundred (\$100) dollars.

JOB BARNARD, *Justice.*

170

Memorandum.

July 11, 1900.—Appeal bond filed.

Instructions to Clerk as to Transcript.

Filed July 23, 1900.

In the Supreme Court of the District of Columbia.

HENRY OETTINGER	}	In Equity. No. 18571.
vs.		
THE DISTRICT OF COLUMBIA.		

The clerk of the supreme court of the District of Columbia:

The following parts of the record in this cause we desire to be included in the transcript on appeal by the complainant to the Court of Appeals of the District of Columbia as necessary for the determination of the questions involved on complainant's appeal:

1. Bill of complaint.
2. Answer of defendant.
3. Replication.
4. Testimony on behalf of respective parties and exhibits.
5. Decree dismissing bill.
6. Note giving of bond.

PADGETT & FORREST,
For Complainant.

July 23rd, 1900.

170½

Order Extending Time for Filing Transcript.

Filed August 16, 1900.

In the Supreme Court of the District of Columbia.

HENRY OETTINGER	}	In Equity. No. 18571.
vs.		
THE DISTRICT OF COLUMBIA.		

For special and sufficient cause shown to the court and on application of the solicitors for the complainant, it is this 15th day of August, 1900, by the court ordered that the time to produce and file with the clerk of the Court of Appeals of the District of Columbia a transcript of the record in this cause by the complainant be, and the same hereby is, extended until the tenth day of September, 1900.

HARRY M. CLABAUGH, *Justice.*

171

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,	}	ss:
<i>District of Columbia,</i>		

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 171, inclusive, to be a true and correct transcript of the record, as per directions of counsel for appellant herein filed, copy of which is made part hereof, in cause No. 18571, equity, wherein Henry Oettinger is complainant and The District of Columbia is defendant, as the same remains upon the files and of record in said court.

Seal Supreme Court of	In testimony whereof I hereunto sub-
the District of Co-	scribe my name and affix the seal of said
lumbia.	court, at the city of Washington, in said
	District, this 18th day of August, A. D.
	1900.

JOHN R. YOUNG, *Clerk.*

172

In the Court of Appeals of the District of Columbia.

HENRY OETTINGER	}	No. 1016.
vs.		
THE DISTRICT OF COLUMBIA.		

It is hereby stipulated and agreed by and between counsel for the respective parties hereto that the appellant, Henry Oettinger, paid the taxes due the District of Columbia on lot 291 and improvements, in square No. 121, being the property described in the third paragraph of the bill of complaint, for the years ending June 30, 1889, June 30, 1890, June 30, 1891, June 30, 1892, June 30, 1893, June 30, 1894, June 30, 1895, June 30, 1896, June 30, 1897, and June 30,

1898, as shown by the receipted bills appearing in the transcript of record.

It is further stipulated and agreed that the clerk of the Court of Appeals shall omit in the printing of the record of this cause typewritten pages 66 to 80, inclusive, and also the map or plat known as Defendant's Exhibit No. 1 and found on page 152 of the transcript of record.

September 6th, 1900.

A. B. DUVALL, *Att'y D. C.*
EDWIN FORREST,
Att'y for Appellant.

(Endorsed :) No. 1016. Court of Appeals D. C., April term, 1900. Henry Oettinger, appellant, *vs.* The District of Columbia. Stipulation of counsel. Court of Appeals, District of Columbia. Filed Sep. 6, 1900. Robert Willett, clerk.

Endorsed on cover: District of Columbia supreme court. No. 1016. Henry Oettinger, appellant, *vs.* The District of Columbia. Court of Appeals, District of Columbia. Filed Sep. 6, 1900. Robert Willett, clerk.

